16-532

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 120.

JAMES TURNER AND THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY, APPELLANTS,

vs.

THE FARMERS' LOAN & TRUST COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 22, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 120.

JAMES TURNER AND THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY, APPELLANTS,

vs.

THE FARMERS' LOAN & TRUST COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Placita	1	1
Transcript from circuit court De Witt County	5	2
Original bill of complaint of Turner Brothers	5	2
Exhibit A, mortgage Danville, Urbana, Bloomington and Pekin Railroad to Farmers' Loan and Trust Company	32	11
B, articles confederation Danville, Urbana, Bloomington and Pekin Railroad Company, and Indianapolis, Crawfordsville and Danville Railroad Company	66	22
C, mortgage Indianapolis, Bloomington and Western to Farmers' Loan and Trust Company	98	32
D, mortgage, Indianapolis, Bloomington and Western to Dennison and Smith	126	42
E, deed, Havana, Mason City, Lincoln and Eastern Railroad Company to Indianapolis, Bloomington and Western Railway Company	153	50
F, mortgage, Indianapolis, Bloomington and Western to Dennison and Turner	161	53
G, mortgage, Indianapolis, Bloomington and Western to Joseph T. Thomas	187	62
Answer of Farmers' Loan and Trust Company	188	62
Cross-bill of Farmers' Loan and Trust Company	217	72
First amendment to cross-bill	256	84
Second amendment to cross-bill	258	84
Third amendment to cross-bill, and supplemental cross-bill	263	86
Answer of Denny, Blossom, and Adriance	318	101
Cross-bill of Denny, Blossom, and Adriance	340	108
Answer, B. E. Smith to Blossom and Adriance cross-bill	375	118
Answer, Dennison to Blossom and Adriance cross-bill	397	124

	Original.	Print.
Transcript, &c.—Continued.		
Answer, Farmers' Loan and Trust Company, to Blossom and Adriance cross-bill	412	129
Answer, C. W. Smith to original bill	422	132
Cross-bill of C. W. Smith	427	133
Suggestion of bankruptcy of Turner Brothers	439	137
Bankruptcy proceedings *vs.* Turner Brothers	441	137
Answer, Danville Banking and Trust Company to original bill	466	146
Answer, Danville Banking and Trust Company to cross-bill Farmers' Loan and Trust Company	483	150
Subpœna on cross-bill Farmers' Loan and Trust Company	493	153
Subpœna on cross-bill Denny, Blossom, and Adriance	505	158
Order of circuit court United States taking jurisdiction	508	159
Answer of Farmers' Loan and Trust Company to cross-bill of Smith	510	160
Thomas et al. to cross-bill of Farmers' Loan and Trust Company	517	162
Turner and Smith to cross-bill of Farmers' Loan and Trust Company	530	166
Deposition of R. G. Rolston	556	176
Josiah B. Blossom	561	178
Austin Corbin	567	180
Giles E. Taintor	572	182
Henry F. Spaulding	577	184
H. P. Babcock	580	185
Charles P. Choate	584	186
Clark R. Griggs	585	186
Charles W. Newring	589	187
Decree of foreclosure, Indianapolis, Bloomington and Western (main line)	592	189
Decree of foreclosure Indianapolis, Bloomington and Western (extension)	621	199
Amended decree Indianapolis, Bloomington and Western (extension)	634	204
Petition of James Turner for leave to intervene	638	205
Master's report of sale (main line)	669	220
Exception of C. W. Smith et al, (main line)	673	222
James Turner (main line)	683	225
James Turner (main line)	688	227
Decree approving sale of Indianapolis, Bloomington and Western (main line)	697	230
Petition of Joseph T. Thomas	700	231
Petition for appeal to Supreme Court	733	243
Order allowing appeal	736	244
Bond on appeal	738	245
Report of sale Indianapolis, Bloomington and Western (extension)	741	246
Exception of Thomas to sale Indianapolis, Bloomington and Western (extension)	747	249
Indianapolis, Bloomington and Western Railway, to sale of (extension)	755	251
James Turner to sale of (extension)	762	253
Amos Kidder et al. to sale of (extension)	770	256
Order for master to make deed Indianapolis, Bloomington and Western (main line)	774	257
Order for master to make deed Indianapolis, Bloomington and Western (extension)	792	262
Certificate	807	268

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge of said court, and the Hon. Samuel H. Treat, judge of the district court of said district, associate judge of said circuit court, on Monday, the 23rd day of December, in the year of our Lord eighteen hundred and seventy-eight, and of our Independence the one hundred and third year.

J. A. JONES, *Clerk.*

MALCOMB C. TURNER, JAMES TURNER, THOMAS E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, co-partners, as Turner Brothers,
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas. } Original bill.

and

2 FARMERS' LOAN AND TRUST COMPANY
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, Joseph T. Thomas, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, co-partners, as Turner Brothers. } Cross-bill.

and

CHARLES W. SMITH AND ROBERT TURNER
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, Farmers' Loan and Trust Company, Benjamin E. Smith, Joseph T. Thomas, Malcolm C. Turner, James Turner, Thomas E. Turner, Archibald Turner, George M. Turner, and Joseph S. Decker. } Cross-bill.

and

JOSEPH T. THOMAS AND BENJAMIN E. SMITH
vs.
INDIANAPOLIS, BLOOMINGTON, AND WESTERN Railway Company, Farmers' Loan and Trust Company, Charles W. Smith, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker. } Cross-bill.

3 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 31st day of May, A. D. 1876, a transcript from the circuit court of De Witt County,

Illinois, containing, among other things, the original bill in said cause and Exhibits A, B, C, D, E, F, & G, thereto; answer of Farmers' Loan & Trust Co., cross-bill of Farmers' Loan & Trust Co., first, second, & third amendments to cross-bill; answer of Denny, Blossom & Adriance, cross-bill of Denny, Blossom & Adriance; answer of B. E. Smith to cross-bill of Denny et al.; answer of Dennison to cross-bill of Denny et al.; answer of Farmers' Loan & Trust Co. to cross-bill of Denny et al.; answer of C. W. Smith to original bill; cross-bill of C. W. Smith; transcript of bankruptcy proceedings vs. Turner Bros.; answer of Danville Banking & Trust Co., to original bill; answer of Danville Banking & Trust Co. to cross-bill of Farmers' Loan & Trust Co., suggestion of bankruptcy of Turner Bros.; seven subpœnas on cross-bill of Farmers' Loan and Trust Co., and subpœna on cross-bill of Denny et
4 al., which said papers in said transcript from De Witt County circuit court, are in the words and figures following, to wit:

5 *Original bill.*

Circuit court of De Witt County, to December term, 1874.

STATE OF ILLINOIS,
De Witt County, ss:

To the honorable judge of said court, in chancery sitting:

Your orators, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners together, under the firm name of Turner Brothers, complainants, who sue herein in behalf of themselves and all other bondholders and creditors of the Indianapolis, Bloomington and Western Railway Company, who may desire to become parties hereto and contribute to the expenses of maintaining this suit, complains of the Indianapolis, Bloomington and Western Railway Company, The Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas, defendants, and say:

That prior to July 12th, 1869, there was a railroad corporation organized and existing under the general laws of the State of Indiana, called the Indianapolis, Crawfordsville, and Danville Railroad, which corporation was vested with full corporate power to locate,
6 construct, and operate a line of railroad from Indianapolis, Marion County, Indiana, westwardly through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren, to the western boundary line of the State of Indiana; and to procure the means to build and operate such line of road the said corporation was vested with full corporate powers to borrow money and issue bonds, secured by a mortgage upon the said line of railroad, and its appurtenances, and appendages, and with all other capacities and powers usually vested in such railroad companies under the laws of the State of Indiana, including the power to consolidate its stock and property with any connecting line of railroad lying in another State.

Prior to the said July 12th, 1869, the said Indianapolis, Crawfordsville and Danville Railroad had become and was then indebted to divers persons and corporations in the sum of one million five hundred thousand dollars, evidenced by certain coupon bonds secured by a first mortgage on the entire line of railroad belonging to such corporation, together with its appurtenances, equipments, tolls, and franchises.

By virtue of an act of the general assembly of the State of Illinois,

approved February 28th, 1867, there was created and organized
7 a corporation of the State of Illinois, called the Danville, Urbana, Bloomington and Pekin Railroad Company, which said corporation, by virtue of such enactment (a certified copy of which the plaintiffs offer to produce as the court may direct) was endowed with full corporate power to locate, construct, and operate the line of railroad designated in said charter from Pekin, in Tazewell County, eastwardly through Bloomington, Mt. Pleasant, Champaign, and Danville, to the eastern boundary line of the State of Illinois, and in order to raise the money necessary for the completing, equipping, operating and maintaining the said line of railroad, the said last-named corporation was authorized to issue and dispose of its bonds, bearing interest not exceeding ten per cent., and secure the payment of the debt so created by a mortgage on the corporate property and franchises, and in and by said charter, and under the general laws of the State of Illinois in that behalf, the said Danville, Urbana, Bloomington and Pekin Railroad was further authorized with full corporate capacity to lease and purchase other lines of railway, and also to consolidate its stock and property with those of any connecting line of railroad in another State; and the complainants pray reference to all and singular the laws of the State of Illinois in that behalf.

8 In order to borrow money for the corporate purpose of the said Danville, Urbana, Bloomington and Pekin Railroad Company, and to complete, equip, operate, and maintain its said line of road, the said railroad company, as thereto by its charter and the laws of the State of Illinois it was fully authorized on the 1st day of April, in the year of our Lord 1869, did sign, seal, execute, acknowledge, and deliver its certain deed of indenture, trust deed, or mortgage, a copy of which, together with such acknowledgement, is hereto attached and marked Exhibit A, and is prayed to be taken as part of this bill of complaint unto the defendants, The Farmers' Loan and Trust Company, a corporation of the city of New York, for the uses and purposes in said conveyance at large expressed, conveying and transferring unto the said Farmers' Loan and Trust Company all and singular the line of railroad then constructed, or authorized by law to be constructed, from Pekin, in Tazewell County, Illinois, through, or as near as practicable, to the towns of Tremont and Mackinoc, town of Concord, Bloomington, Leroy, Mt. Pleasant, Mahomet, Champaign, city of Urbana, and St. Joseph, to the eastern boundary line of the State of Illinois, including all railways, rights of ways, depot grounds, and tracks, bridges, viaducts, culverts, fences, and other structures, depots, station-houses, en-
9 gine-houses, and other buildings, and all machine-shops, and all other real or personal estate that is held, or thereafter to be acquired by the said company for use in connection with the said line of railroads, including all locomotives, tenders, cars, ond other rolling stock, and all machinery, tools, implements, fuel, and materials for constructing, operating, and repairing, or replacing the said railroad, or any part thereof, together with the franchises connected with or relating to the construction, maintenance and use of the said railroad, and also the tolls, income, and profit to be levied on the said property. The said conveyance being in trust upon certain conditions therein specified, for the purpose of securing the issue of two thousand bonds of $1,000 each, bearing semi-annual interest, payable at the said Farmers' Loan and Trust Company, in American gold coin, and the said conveyance was duly recorded according to law in all of the counties through which the said Danville, Urbana, Bloomington and Pekin

Illinois, containing, among other things, the original bill in said cause and Exhibits A, B, C, D, E, F, & G, thereto; answer of Farmers' Loan & Trust Co., cross-bill of Farmers' Loan & Trust Co., first, second, & third amendments to cross-bill; answer of Denny, Blossom & Adriance, cross-bill of Denny, Blossom & Adriance; answer of B. E. Smith to cross-bill of Denny et al.; answer of Dennison to cross-bill of Denny et al.; answer of Farmers' Loan & Trust Co. to cross-bill of Denny et al.; answer of C. W. Smith to original bill; cross-bill of C. W. Smith; transcript of bankruptcy proceedings vs. Turner Bros.; answer of Danville Banking & Trust Co., to original bill; answer of Danville Banking & Trust Co. to cross-bill of Farmers' Loan & Trust Co., suggestion of bankruptcy of Turner Bros.; seven subpœnas on cross-bill of Farmers' Loan and Trust Co., and subpœna on cross-bill of Denny et
4 al., which said papers in said transcript from De Witt County circuit court, are in the words and figures following, to wit:

5 *Original bill.*

Circuit court of De Witt County, to December term, 1874.

STATE OF ILLINOIS,
De Witt County, ss:

To the honorable judge of said court, in chancery sitting:

Your orators, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners together, under the firm name of Turner Brothers, complainants, who sue herein in behalf of themselves and all other bondholders and creditors of the Indianapolis, Bloomington and Western Railway Company, who may desire to become parties hereto and contribute to the expenses of maintaining this suit, complains of the Indianapolis, Bloomington and Western Railway Company, The Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas, defendants, and say:

That prior to July 12th, 1869, there was a railroad corporation organized and existing under the general laws of the State of Indiana, called the Indianapolis, Crawfordsville, and Danville Railroad, which corporation was vested with full corporate power to locate,
6 construct, and operate a line of railroad from Indianapolis, Marion County, Indiana, westwardly through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren, to the western boundary line of the State of Indiana; and to procure the means to build and operate such line of road the said corporation was vested with full corporate powers to borrow money and issue bonds, secured by a mortgage upon the said line of railroad, and its appurtenances, and appendages, and with all other capacities and powers usually vested in such railroad companies under the laws of the State of Indiana, including the power to consolidate its stock and property with any connecting line of railroad lying in another State.

Prior to the said July 12th, 1869, the said Indianapolis, Crawfordsville and Danville Railroad had become and was then indebted to divers persons and corporations in the sum of one million five hundred thousand dollars, evidenced by certain coupon bonds secured by a first mortgage on the entire line of railroad belonging to such corporation, together with its appurtenances, equipments, tolls, and franchises.

By virtue of an act of the general assembly of the State of Illinois,

approved February 28th, 1867, th...

7

Transcripts of Records.
1882

417.

Supreme Court of U. S.
16th Otto
552-571

body

...nized
...bana,
...pora-
...laint-
...h full
...lroad
...ardly
...o the
...e the
...nain-
... was
...t ex-
...ated
... and
...inois
...ekin
...ease
...tock
...ther
... the

... said
... and
... said
...tate
...ear
... its
..., to-
... Ex-
...nto
...ion
...nce
...ers'
...nen
... in
... the
...oy,
...ph,
...ail-
...ts,
...en-
... all
...ac-
... of
...ng
...or
...or
...at-
...d,
...p-
...ns
...nd

b... ...each, bearing semi-annual interest, payable at the said Farmers' Loan and Trust Company, in American gold coin, and the said conveyance was duly recorded according to law in all of the counties through which the said Danville, Urbana, Bloomington and Pekin

Railroad Company had located its said line of road, within the time required by law, and did then and thereby become a first lien upon the said line of railroad from the city of Pekin eastwardly to the boundary line between the States of Indiana and Illinois.

10 And the said last-named railroad corporation did proceed, under the protection of the said trust conveyance, to issue, utter, and put in circulation, in the usual course of business, and for value, the entire issue of bonds provided for in said indenture, and amounting to the sum of $2,000,000, and the entire amount of said issue of bonds still continues outstanding and unpaid by the said railroad corporation which originally issued them, and its present successor, Indianapolis, Bloomington and Western Railroad Company, the defendant.

5. And by articles of confederation, duly entered into and between the Danville, Urbana, Bloomington & Pekin Railroad Company of Illinois, and the Indianapolis, Crawfordsville & Danville Railroad Company, of Indiana, which bears date the 12th day of July, in the year 1869, and which were duly ratified by the board of directors and the stockholders of both said corporations, the said two last-named corporations being thereto duly authorized by their respective charters and the law' of the States of Illinois and Indiana, their said roads intersecting, uniting, and connecting at the State line, consolidated their stock and property and became one corporation, called the Indianapolis, Bloomington & Western Railroad Company, in pursuance of said articles, which said last-named corporation, by virtue of said consolidation articles

11 and the laws of Indiana and Illinois in that behalf, became thereby vested with all and singular the property, estate, privileges, and franchises, and subject to all the debts, liabilities and obligations of the two original companies which had executed the said articles of consolidation. Complainants file herewith a certified copy of such articles of consolidation, marked Exhibit B, and prays that the same be taken as a part of this bill of complaint.

6. Thereupon, on the first day of October, 1869, for the purpose of retiring the original issue of bonds made by the said Indianapolis, Crawfordsville & Danville Railroad Company to the amount of $1,500,000, and also the issue put into circulation by the Danville, Urbana, Bloomington and Pekin Railroad Company as aforesaid amounting to $2,000,000, and for the further purpose of borrowing the money to provide new equipment and machinery for the adequate operation of the said new corporation, the Indianapolis, Bloomington & Western Railway Company, the said last-named corporation did, under the authority of its board of directors, sign, seal, and execute, acknowledge and deliver unto the defendant, The Farmers' Loan and Trust Company of the city of New York, as trustee, its certain indenture of mortgage or trust deed, whereby it conveyed unto the said Farmers' Loan and Trust Company all and singular the railway of the said Indianapolis, Bloom-

12 ington & Western Railway Company, extending from the city of Indianapolis through Crawfordsville, Indiana, through Danville, Urbana, and Bloomington, in the State of Illinois, to Pekin, being about 210 miles in length, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of the said railway, including all rents, reservations, reversions of all nature and kind whatever, including all the property between the said terminal points which the said railway company then had owned or possessed or might thereafter acquire. The said indenture being executed in trust solely and as security for the punctual payment of the principal and interest of the issue of 5,000

bonds, numbered from 1 to 5,000, bearing date the 1st of October, 1869, payable to bearer, in the city of New York, on the first day of October, 1909, principal and interest being payable in gold, together with semi-annual interest thereon after the rate of seven per cent. per annum, evidenced by interest warrants or coupons, obligations payable in the city of New York on the first days of April and October of each year. Complainants show that the said instrument was spread of record in the proper recorder's office of each and every county through which the said line of road runs in Indiana, and also in Illinois, and
13 they file herewith a copy of said mortgage or trust deed, together with the acknowledgments thereof, and prays that it may be taken as a part of this bill of complaint, marked Exhibit C. As contemplated by said last-named indenture, the said Indianapolis, Bloomington & Western Railway Company proceeded to and did actually retire all and singular the issue of $1,500,000 of the bonds of the Indianapolis, Crawfordsville and Danville Railroad Company hereinbefore mentioned, and issued in lieu and exchange thereof $1,500,000 of the issue of bonds secured by the said indenture of October 1st, 1869, and did also issue and put into circulation, in the usual course of business and for value, a further amount of $1,500,000 of said last issue of bonds for the purpose of borrowing money for the corporate use and in order to provide additional equipments and machinery for the operation of said road, and as they are advised and so charges, no part of the issue of $2,000,000 of the Danville, Urbana, Bloomington & Pekin Railroad Company hereinbefore specified was ever surrendered or exchanged for any portion of the bonds provided for by the indenture of October 1st, 1869, but that the entire amount of bonds issued under the provisions of said last-named conveyance amount in the aggregate to $3,000,000 and no more, and that the remaining 2,000,000 of such issue are
14 still in the custody of the Indianapolis, Bloomington & Western Railway Company and its agents and representatives wholly unissued, and constitute no indebtedness of or lien upon the property of said corporation.

7. After, to wit, on the first day of October, 1870, the said Indianapolis, Bloomington and Western Railway Company did, as thereto authorized by its charter, and under the orders of the board of directors of said company, sign, seal, execute, acknowledge, and deliver its certain other trust deed or mortgage conveying unto the defendants, William Dennison and Benjamin E. Smith, as proceeds for the issue therein expressed, all and singular the entire railway extending from Indianapolis westward to Pekin, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of said railway, including all lands, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which the said railway company then had or might thereafter acquire. The said conveyance was executed in trust and as security for the then contemplated issue of bonds to the amount of $1,500,000, called second mort-
15 gage bonds, intended by said corporation to be issued for the purpose of borrowing money for the equipment, operating, and uses of the said railway. The said indenture was duly recorded in the recorders' offices in the various counties through which the said railway runs, both in the State of Indiana and the State of Illinois, and the complainants attach hereto, marked Exhibit D, a copy of said mortgage, together with the acknowledgment thereof, and prays that the same may be taken as a part of this bill of complaint. And under

the protection and security of said indenture the said Indianapolis, Bloomington and Western Railway Company did proceed to utter and put into general circulation, in the usual course of business, and for value, its so-called second mortgage bonds, in the aggregate amounting to $1,500,000, dated on the 1st day of October, 1870, payable twenty years from date, bearing interest at the rate of eight per cent. per annum, evidenced by interest warrants payable on the 1st January and July of each and every year; and the said $1,500,000 of second mortgage bonds still remain outstanding in the hands of divers persons and corporations, and have been, and still remain, unpaid by the said railway company, and constitute an indebtedness against it to the
16 full amount of the principal and the present unpaid interest thereupon.

8. Prior to the 28th day of June, 1872, there was a corporation of the State of Illinois called the Havana, Mason City, Lincoln, and Eastern Railway Company, being formed by a consolidation of a company of the same name with the Monticello Railroad Company, also of the State of Illinois, the said last-named corporation possessing certain franchises and privileges under its charter and the laws of the State of Illinois, and also a line of railroad in the process of construction from the city of Decatur to Champaign, in Champaign County, Illinois, and also from the last-named point westwardly through Clinton, Lincoln, Mason City, and Havana, to a point on the Mississippi River. Thereafter, on the 28th day of June, 1872, the said Havana, Mason City, Lincoln, & Eastern Railway Company, under due authority of it charter, did sign, seal, execute, acknowledge, and deliver unto the Indianapolis, Bloomington & Western Railway Company, then and there duly empowered by its charter to receive such grant and deed of conveyance of all and singular the said line of railroad belonging to said Havana, Mason City, Lincoln and Eastern Railway Company, then constructed and
17 authorized to be constructed, together with all franchises, liberties, and privileges in any manner pertaining to said line of road. A copy of said conveyance is hereunto annexed, marked Exhibit E, and prayed to be taken as a part of this bill of complaint.

9. And on the 28th day of June, 1872, the said Indianapolis, Bloomington & Western Railway Company, being then fully vested with the said line of railroad and franchises prior to that belonging to the Havana, Mason City, Lincoln and Eastern Railway Company, in order to borrow money for the purpose of constructing, maintaining, and operating its line of railroad, did, under authority of its board of directors, and has thereto duly authorized to sign, seal, execute, acknowledge, and deliver unto the defendants, William Dennison and Robert Turner, its certain other deed of trust or mortgage conveying to said Dennison and Turner all and singular the railroad of said Indianapolis, Bloomington & Western Railway Company from Champaign, in Champaign County, Illinois; thence to the town of White Heath, in the county of Piatt; Clinton, De Witt County; Lincoln, in Logan County; Mason City and Havana, Mason County, westwardly to the Mississippi River; and also from the said town of White Heath, by way of Monti-
18 cello, Piatt County, to the city of Decatur, in Macon County, all in the State of Illinois, and being in length about 215 miles, together with all the franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind and nature used in or connected with the operation of said line of railroad, including all rents, reservations, reversions of every nature and kind whatever, and including all the property between said terminal points

which the said railroad company then owned or might thereafter acquire; the said indenture being in trust & as security for the punctual payment of the principal and interest of 5,500 bonds of said railway company, each for the sum of $1,000, bearing date July 1st, 1872, payable to bearer on July the first, 1912, principal and interest payable in gold coin of the United States, with interest warrants, at the rate of seven per cent. per annum, payable on the first days of January & July in each, at the office or agency of the company in the city of New York.

The complainant files herewith a full copy of said last-named indenture, together with its acknowledgements, marked Exhibit F, and prays that the same may be taken as part of his bill of complaint. And the said indenture was duly recorded in all the counties of the State
19 of Illinois through or into which the said property therein described and conveyed was situate; and as provided by the said indenture and under the protection thereof the said Indianapolis, Bloomington & Western Railway Company has either negotiated absolutely or by way of hypothecation or security in the usual course of business and for value, all and singular the said $5,500,000 of bonds intended to be secured by the said conveyance. And the said amount of obligation, commonly known as extension bonds, is now outstanding against the said corporation either absolutely or by hypothecation, and no part of the same has ever been paid, cancelled, or retired by the said corporation.

10. The complainants show that after the consolidation between the said Indianapolis, Crawfordsville and Danville Railroad Company with the Danville, Urbana, Bloomington and Pekin Railroad Company, that the principal office of the said consolidated corporation, The Indianapolis, Bloomington and Western Railway Company, was located at, and has continuously ever since remained at, the city of Urbana, Champaign County, Illinois, and that all of the meetings of the shareholders, for the purpose of elections and the transaction of other corporate
20 business, has always been held at said last-named place. Prior to the eighth day of August, 1870, the said Indianapolis, Bloomington and Western Railroad Company possessed only a small amount of equipments compared with its present ownerships; and that since the said eighth day of August, 1870, during all of which time its principal office has been at Urbana, it has purchased and acquired a large amount of personal property, consisting of engines, cars, and tools, machinery, material, and supplies; and that the value of such personal property so acquired by it since the 8th day of August, 1870, and now owned and possessed by it, amounts in the aggregate to about $1,500,000. Complainants show that by virtue of the constitution of the State of Illinois, adopted and enforced on the said 8th day of August, 1870, it is declared that all of the rolling-stock and movable property belonging to railroad companies shall be held to be personal property, and, as such, subject to execution and sale; and the complainants show that in consequence of such constitutional provisions, and the laws of the State enacted thereunder, that it is claimed by certain of the creditors of said Indianapolis, Bloomington & Western Railway Company that no part of said $1,500,000 of personal property now belonging to said defendant railway corporation is in any manner now embraced
21 or subject to any lien or encumbrance of any of the different trust conveyances hereinbefore recited, for the reason that the said property has been acquired since such constitutional provision, since the date of said several mortgages, and that none of the said re-

cited indentures of mortgage were executed, acknowledged, or acquired in such manner as to be valid liens under the laws of the State of Illinois, on the personal property of a corporation having its principal office and place of business in said State; and for the further reason that under the laws of said State no encumbrance by way of mortgage upon goods and chattels is valid for a longer period of time than two years from the date of such instrument.

11. Complainant shows that for the corporate uses of said railway company, and as necessary for the purpose of constructing and operating the said road, and also procuring means to pay interest upon the bonded liability of said corporation during the period of construction, and when the earnings derived from the operation of the road were not sufficient for the purpose of said Indianapolis, Bloomington & Western Railway Company had become indebted by way of notes, acceptances, and adjusted accounts, and other obligations, to the
22 amount of two millions and a half of dollars, for which sum negotiable paper of the said corporation, in some instances endorsed by some of its officers and directors, and also secured by pledge and hypothecation of the bonds of said company, is now outstanding, and constitutes a liability of the said corporation, and in the hands of the different persons and corporations who are holders of the same; and the said paper—commercial paper—of the said railway company is becoming due from time to time, and the said corporation is without net earnings at present, in consequence of a large decrease in the business of the company, consequent upon the financial difficulties of the times, to pay said commercial paper in the order of its maturity. Plaintiff shows that already in consequence of such inability, that suits have been begun in the different courts in Indiana and in Illinois, and also in the United States court, against the said railway company, and that divers of its creditors are now, and many more threaten, to take immediate steps to secure judgment against the said corporation and issue execution thereupon, and levy upon the personal property of the said corporation, which is necessary for its proper operation in its business as a common carrier, and thereby secure a priority over all other
23 creditors in having such judgments and executions.

12. On the day of November, 1874, the said Indianapolis, Bloomington & Western Railway Company, by its president and secretary, duly authorized, did sign, seal, execute, acknowledge, and deliver a certain trust, conveyance, or mortgage of all and singular, its chattels and personal property, therein more specifically described to the defendant, Joseph T. Thomas, embracing therein all and singular the personal property of every kind, character, and description in any manner belonging to the said corporation. The said trust mortgage being executed as security for all and singular the benefit, protection, and payment of such creditors as held the notes acceptances, and obligations aforesaid, not included in the bonded issues hereinbefore described, but more specifically set out at large in said chattel mortgage. Plaintiff files herewith a copy of said last-named indenture with the acknowledgment marked Exhibit G, and prays that it be taken as part of this complaint. The said mortgage was duly recorded as required by law, and constitutes thereby, as plaintiff charges, and as a matter of law, a first and paramount lien of all and singular the goods, chattels, and personal property therein described, anything in the said
24 prior indebtedness to the contrary notwithstanding.

12. The plaintiff shows that in consequence of the general depression of business in the fall of the year 1873, and thence hitherto,

the said railway company has not been able out of its earnings to provide for its commercial liabilities maturing from time to time, and also for the semi-annual installments of interest due upon the different classes of bonded obligations by it issued as aforesaid, and that in consequence of such want of net earnings it made default in the payment of the interest of the mortgage of October 1st, 1869, on the first day of October, 1873, and also on the first day of April, 1874, and also made default in the payment of the semi-annual installment of interest due on the two millions of bonds issued in the same of Danville, Urbana, Bloomington & Pekin Railroad Company on the first days of and , and also made default in the payment of the semi-annual installments of interest due in January and July, 1874, on the so-called second mortgage bonds, and also made default of the semi-annual installments of interest due on the first days of January and July, in the bonds commonly called extension bonds, and secured by a mort-
25 gage, dated June 28, 1872. And the plaintiff shows that no part of the *the* several installments of interest due upon said different bonded obligations have ever been paid by the said corporation, nor have any part thereof, but the same still remains in arrears, and constitute a just debt against the said corporation and a lien upon the property of the said company, according to the legal and equitable priorities as they may be determined as a matter of law by the court upon the said several indentures of mortgage hereinbefore recited.

14. And the complainants further say that from time to time during the past three or four years they have loaned money to the said corporation for the purpose of paying interest upon the mortgage debt of the corporation and paying for the labor and supplies necessary in the operation of said line of road, and the said corporation is now justly indebted to the plaintiffs in the sum of about eight hundred and sixty-five dollars, exclusive of interest, as evidenced by the promissory notes and obligations and books of account of the said corporation, of which sum probably as much as five hundred thousand dollars of the sum now outstanding unpaid is for money advanced by the complainants to pay interest installments on the two million
26 mortgage executed by the Danville, Urbana, Bloomington and Pekin Railroad Company, and the three million of bonds outstanding under the first mortgage executed by the Indianapolis, Bloomington and Western Railway Company, and on the second mortgage for fifteen hundred thousand dollars issued by said last-named railroad company; and the said corporation never having paid such installments of interest to the amount aforesaid, the plaintiffs claim, and will to the court insist, that all and singular the notes and acceptances of the said railway company to the amount aforesaid of such interest payment are mere substitutions for and *removals* of the different coupons and interest warrants falling due in Oct., 1873, and April, 1874, and January, 1874, and that the plaintiffs are entitled by subrogation to the security and protection of such mortgage security precisely as though the said *company*, for which payment was provided by the plaintiffs, *even* still outstanding in the hands of the plaintiffs; and the plaintiffs submit that, according to the terms of said mortgage, the plaintiffs having, for the protection of their interests as subsequent mortgage's and bondholders, paid such interest, are entitled to be first paid out of any proceeds of sale arising from such mortgaged
27 property. And besides such debt so due as aforesaid to the plaintiffs, they show that they are the owners and holders of bonds issued under the first mortgage of the said railway company

defendant, and also owner and holder of bonds issued under the second mortgage of the said railway company, and also the owner and holder of nearly one million three hundred thousand dollars of the bonds commonly called extension bonds, on all of which default has been made in the payment of interest as aforesaid, whereby the conditions of said several mortgages given to secure such bonds and others of like class have broken, and said mortgages have become forfeited, and the complainants as such bond creditors are entitled to have the said mortgaged property, income, rents, and franchises sequestered and sold, and the proceeds applied according to the several liens, priorities, and equities of all the parties interested in the said mortgaged property as such liens, priorities, and equities may be determined by the court.

15. The complainants say that the entire line of railway belonging to said corporation defendant, both in the State of Indiana and Illinois, has always been operated and worked as a unit and as one con-
28 tinuous line of railway, and the equipment, engines, cars, and materials used in the operation thereof have been used indiscriminately over each and every portion of the entire line, and no portion of such equipment has ever been apportioned to any particular part of the line of railroad, nor have the earnings or expenditures of any part of the line been kept separately from the earnings and expenditures of any other portion, but have been kept in one general account; and the complainants are advised that at least one million of dollars of the money derived from the sale of extension bonds has been used in the purchase of equipments and betterments for the use and behoof of the original main line; and by reason of all and singular such matters as the complainants are by counsel advised, very many and complicated issues and conflicting claims are likely to arise as to the adjustment of the different liens and equities of the several classes of bond and floating-debt creditors, and especially as to the status of the equipment and personal property now belonging to said corporation and acquired by it from time to time since its incorporation. And the complainants were not until quite recently advised of the legal status of such personal property, and the probable difficult and conflicting claims there-
29 upon, and the exposure of the same to execution and sale; but had always, until a few days last past, supposed that the said mortgages under which said different series of bonds were issued were undoubted liens upon all and singular the equipment and personalty of the said railway corporation.

16. The complainants, therefore, in behalf of themselves and all other bond creditors and floating-debt creditors having any liens upon the property of said corporation, pray that an account be taken of all and singular the debt and liabilities of the said Indianapolis, Bloomington and Western Railway Company, and of the relative rights, liens, and priorities of all and singular such creditors in and upon the property and franchises of such corporation, and of the amount now due respectively unto any and all such creditors; and that the said mortgages executed by the said corporation on its real and personal property be foreclosed under the order of this court, so far as the same may be within its jurisdiction; and that the sale of said property be ordered to be made under the direction of the court, after the different liens and priorities are adjusted and decreed, as hereinbefore prayed; and that out of the proceeds of such sale there shall be paid
30 all and singular the amounts decreed to be due unto the complainants and all other creditors of said railway corporation,

according to their respective liens or claims upon the property as they may be hereafter adjusted by the court.

17. And the complainants further pray that, inasmuch as the present revenues of said corporation are insufficient to keep down the interest upon its bonded debt, secured by mortgage, and the said corporation is unable to meet its obligations as they mature, and is therefore in imminent danger of insolvency, and because the recovery of judgments and other levy upon and forced sale of any of the personal property of said corporation would impair the efficiency of the said railway corporation to perform its duties to the public, in the due and punctual operation of its road, and also tend to destroy and greatly impair the just security to which the complainants and other bond creditors are entitled, the court will forthwith appoint a receiver of the said corporations, according to equity practice, to take possession of said line of railroad and all its property, and hold and manage the same under the orders of the court from time to time entered in this cause.

31 And your orators pray that due process of subpœna issue, commanding the defendants, and each of them, to appear and answer the premises, but without oath, any answer under oath being hereby expressly waived. And the complainants pray that the court will grant such other relief as may be proper in the premises and necessary to the protection of the rights of the complainants and all others standing in the same relation.

MALCOLM C. TURNER & OTHERS,
Complainants.

H. CRAWFORD, *Solicitor.*

Josesh S. Decker, on oath, says he is one of the complainants herein, and that the facts stated in the foregoing bill are true.

JOSEPH S. DECKER.

Subscribed and sworn to before me November 18, 1874.

WM. H. HARRISON,
Circuit Clerk.

32 *Exhibit A to bill.*

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between the Danville, Urbana, Bloomington and Pekin Railroad Co., incorporated under and by virtue of the laws of the State of Illinois, of the first part, and the Farmers' Loan and Trust Co., a corporation created by the laws of the State of New York, of the second part:

Whereas, in pursuance of the power and authority in it duly vested the said Danville, Urbana, Bloomington and Pekin Railroad Co. have resolved to issue and negotiate a series of two thousand bonds, each of one thousand dollars, numbered respectively from 1 to 2000, inclusive, and amounting in the aggregate to two million dollars, which said bonds are to be all equally secured by these presents, and are to be of like tenor, and substantially in the form following:

UNITED STATES OF AMERICA.

No.] THE STATE OF ILLINOIS. [$1,000.

The Danville, Urbana, Bloomington and Pekin Railroad Co.

[1] First mortgage gold-bearing bond, convertible into the capital stock of the company at par.

Know all men by these presents that *that* the Danville, Urbana,

33 Bloomington and Pekin Railroad Co. is indebted to the Farmers' Loan and Trust Co., or bearer, in the sum of one thousand dollars, gold coin of the United States of America, which the said company promise to pay to the said The Farmers' Loan and Trust Co., or the bearer hereof, on the first day of April, in the year one thousand nine hundred and nine, at the city of New York, with interest thereon at the rate of seven per centum per annum, payable in gold, semi-annually, in the city of New York on the first days of April and October in each year upon presentation and surrender of the coupons hereto annexed as they severally become due; and in case of non-payment of any half-yearly installment of interest which shall have become payable and shall have been demanded, and the continuance of such default for the period of six months after any such demand, the principal of this bond shall become due in the manner and with the effect provided in
[2] the deed of trust or mortgage securing the payment of the same hereinafter mentioned. This bond is one of a series of two thousand bonds, each of one thousand dollars, of like tenor and date,
34 numbered respectively from 1 to 2000 inclusive, and amounting in the aggregate two million dollars, ($2,000,000), and the payment of each and all of which is equally secured by a deed of trust or mortgage, bearing date the first day of April, eighteen hundred and sixty-nine, duly executed and delivered by the said railroad co. to the said The Farmers' Loan and Trust Co., trustees, conveying the railroad of the said company, and its equipments, appurtenances, property, franchises, and things in the said deed of trust or mortgage mentioned and described. This bond is entitled to the benefit and security of a sinking fund of ten thousand dollars provided for and described in said deed of trust or mortgage, to be set apart annually for the redemption of bonds secured by said deed of trust or mortgage. This bond shall pass by delivery, or it may be registered by its owner on the books of the company at the office of the Farmers' Loan and Trust Co., in
[3] the city of New York after a registration of ownership duly certified hereon at the aforesaid office. No transfer, except upon the books of the company, shall be valid unless the last transfer
35 shall have been to bearer and transfer ability by delivery thereby restored; but this bond shall continue subject to successive registration, and transfers to bearer as aforesaid, at the option of the holders. This bond shall not become obligatory until it shall have become authenticated by a certificate endorsed hereon and signed by the president of the Farmers' Loan and Trust Co. for the time being.

In witness whereof the said co. has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of its president and secretary, and has also caused the coupons hereto annexed to be signed by its secretary, this first day of April, in the year one thousand eight hundred and sixty nine.

C. R. GRIGGS, *President.*

W. J. ERMINTROUT, *Sec'y.*

Now, therefore, this indenture witnesseth that for and in consideration of the premises, and of the sum of one dollar to the said par-
[4] ties of the first part duly paid by the said parties of the second part, and in order to secure the payment of the principal and in-
36 terest of the said bonds according to the tenor thereof, and of the coupons thereto annexed, the said Danville, Urbana, Bloomington and Pekin Railroad Co., the parties of the first part thereto have granted, bargained, and sold, and by these presents do grant, bargain,

sell, convey, and transfer unto the said parties of the second part, and their successors and assigns, all and singular the railroad of the parties of the first part, or which the said parties of the first are by law authorized to construct, being the line of railroad heretofore known or hereafter to be known as the Danville, Urbana, Bloomington and Pekin Railroad, as the same is and hereafter shall be constructed, extending from the city of Pekin in Tazewell County, through or as near as practicable to the towns of Tremont, Mackinawtown, Concord, Bloomington, Leroy, Mount Pleasant, Mahomet, Champaign City, Urbana, and St. Joseph, to the east boundary of the State of Illinois, including all the railways, ways, rights of way, depot grounds, and other lands, all tracts, bridges, viaducts, culverts, fences, and other structures, depot, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings, and all the machine shops and other shops, and all other real or personal estate held or acquired, or hereafter to be held or acquired by the said company, its successors, or assigns, for use in connection with the railroads of the parties of the first part, or with any part thereof, *the parties of the first part or with any part thereof*, or with the business of the same, and including also all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or any part thereof, or of any of the equipments or appurtenances of the said railroads, or any part thereof, and all machinery of all kinds, and all and singular the other personal property of any nature, kind, and description whatsoever, belonging to the Danville, Urbana, Bloomington & Pekin Railroad Co., and all real estate of every kind belonging to the said Danville, Urbana, Bloomington and Pekin Railroad Co., wheresoever the same may be situated, and also all franchises connected with or relating to the said railroad, or to the construction, maintenance, or use of the said railroad; and all the property, franchises, rights, and things of whatsoever name or nature, now held or hereafter to be acquired by the said parties of the first part, or their successors, together with all and singular the tenements, hereditaments, and appurtenances, to the said railroad, lands, and premises, or either thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances; to have and to hold the above-mentioned and described railroad branches, real estate, personal property, and premises, with the appurtenances, unto the said parties of the second part, and their successors and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, and their successors and assigns; in trust, nevertheless, for the purpose herein expressed, to wit:

[5] 37 [6] 38 [7] 39

ARTICLE FIRST. Until default shall be made by the said parties of the first part, their successors or assigns, in the payment of the principal or interest, or some part thereof, of the said bonds, or some one of them, or until default shall be made in some payment into the sinking fund hereinafter mentioned, or in some other requirement hereof, the said parties of the first part, their successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railroad, with its equipments and appurtenances, and also the lands and premises, property, and franchises hereinbefore described, and to

receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof in the same manner and with the same effect as if this mortgage had not been made.

[8] ARTICLE SECOND. In case first default shall be made in the payment of any interest on any of the said bonds, according to the tenor thereof, or of the coupons thereto annexed, or in the payment of any part of the principal of said bonds, or any of them, when the same shall become due, and that any such default shall continue for the period of six months; or, secondly, in case default shall be made in any payment by these presents required to be made into the sinking fund hereinafter mentioned, and that such default shall continue for the period of six months; thirdly, in case default shall be made in the performance or observance of one or other requirement hereof, and that such last-mentioned default shall continue for the period of six months, then, and in either of such cases, it shall be lawful for the said trustees, or their successors, personally, or by their attorneys or agents, to enter into and upon all and singular the railroad, lands, and premises hereby conveyed, or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by their superintendents, managers, receivers, or servants,

[9] or other attorneys or agents, the said railroads, and conducting the business thereof, and making from time to time all repairs or replacements and such useful alterations, additions, and improvements thereto as may seem to them to be judicious, and collect and re-

41 ceive all tolls, freights, incomes, rents. issues, and profits of the said railroads, lands, and premises, and of every part and parcel thereof, and after deducting the expenses of operating the railroads and conducting the business thereof, and all the expenses incurred in the holding and management of said lands, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments upon the said premises, or any part or parcel thereof, as well as just compensation for their own services and for the services of such attorneys and counsel as may have been by them employed, to apply the moneys aris-

[10] ing as aforesaid to the payment of interest on the said bonds, in the order in which such interest shall have become due, ratably, to the persons holding the coupons evidencing the right to such interest; and after paying all interest which shall have become due, apply the said moneys to the payment of the principal of such of the said bonds as may be at that time unpaid ratably and without discrimination or preference; and if, after satisfactien thereof, a sur-

42 plus shall remain, to pay over such surplus to the said company, its successors, or assigns, or as any court of competent jurisdiction shall order.

ARTICLE THIRD. In case default shall be made as aforesaid, and shall continue as aforesaid, it shall likewise be lawful for the said trustees, or their successors, after entry as aforesaid, or other entry without entry, personally, or by their attorneys or agents, to sell and dispose of all and singular the railroads, lands, and premises hereby conveyed or intended so to be, at public auction, at the city of New York, or at the city of Urbana, or at other such place within the State of Illinois as the said trustees or their successors shall designate, and at such time as they may appoint, having first given notice of the place

[11] and of the time of sale by advertisement published not less than three times a week for six weeks in one or more newspapers published in the city of New York; and, also, in one or more newspapers pub-

lished in the State of Illinois, and wherever else required by law, and to adjourn the said sale from time to time in their discretion, and if so
43 adjourning to make the same without further notice at the time and place to which the same may be so adjourned; and to make and deliver to the purchase' or purchasers of the said premises good and sufficient deed or deeds in the law for the same in fee simple, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said parties of the first part, their successors and assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said parties of the first part, their successors or assigns, and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities, which may have been made or incurred by the said
[12] trustees in respect to the said railroad, lands, premises, or any part or parcel thereof, or in operating or maintaining the said railroad, or any part thereof, or in managing the business thereof, while in their possession, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by them
44 of taxes or assessments on the said premises, or any part thereof, as well as compensation for *for* their own services, to apply the said proceeds to the payment of the principal of such *at* the said bonds as may be at that time unpaid; whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid without discrimination or preference, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if after payment of the same in full a surplus shall remain, to pay over such surplus to the said co., or *or* render the same as any court of competent jurisdiction shall order; and it is hereby declared and agreed *of* the receipt of the said trustees shall be a sufficient discharge to the purchaser or purchasers of the premises which shall be so sold, as aforesaid, for his or their purchase money, and that such purchaser
[13] or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to the application of such purchase money upon
45 or for the trust or purposes of these presents, or be in any manner whatever answerable for any loss, misapplication, or non-application of such purchase money, or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE FOURTH. At any sale of the aforesaid property, or of any part thereof, whether made by virtue of the power herein granted, or by judicial authority, the trustees may, in their discretion, bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of the holders of the bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders at a reasonable price if but a portion of the said property shall be sold, or if all of it be sold at a price
[14] not exceeding the whole amount of such bonds then outstanding, with the interest accrued thereon.

ARTICLE FIFTH. In case default shall be made in the payment of any half year's interest on any of the said bonds at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented and the payment of the interest therein
46 specified having been demanded, and that such default shall con-

tinue for the period of six months after the said coupon shall have become due and been demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the trustees, become immediately due and payable, but at any time before the interest in arrear shall be paid, a majority in interest of the holders of the said bonds may, by an instrument in writing under their hands and seals, instruct the trustees to declare the said principal to be due, or to waive the right so to declare on such terms and conditions as such majority in interest shall deem proper, or may annul or reverse the election of the trustees, provided that no action of the trustees or bondholders shall extend to or to be taken to effect any subsequent default
[15] or impair the rights resulting therefrom.

ARTICLE SIXTH. The said trustees shall also, in their own discretion, have full power to convey or release upon the written request of the Danville, Urbana, Bloomington and Pekin Railroad Co.,
47 any lands acquired or held for the purposes of stations, depots, shops, or other buildings, and shall also have power to convey or release as aforesaid, on like request, any lands or property which, in their judgment, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material; and also to convey or release as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change in the location of any station-house, depot, shop, or other adjacent building connected with the said railroad or any part thereof, and such lands not occupied by the track and adjacent to such station-house, depot, shop, or other buildings as the said company may deem expedient to disuse or abandon by reason of such change, and to consent to any such change and to such other changes in the
[16] location of the track or depot or other buildings as in their judgment shall have become expedient, and to make and deliver the instruments necessary or proper to carry the same into effect,
48 but any lands which may be required for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents, and trustees shall also have full power to allow the said company from time to time to dispose of, according to its discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for such use, replacing the same by new, which shall be conveyed by the said co. to the trustees, or to be otherwise made subject to the lien and operation of these presents.

ARTICLE SEVENTH. On the first day of April, eighteen hundred and seventy-three, and on the first day of April in each succeeding year thereafter, the said parties of the first part, their successors and assigns, for the further security and ultimate redemption of the bonds intended to be secured hereby, and for the creation of a sinking fund
[17] for that purpose, shall pay to the trustees the full sum of ten thousand dollars, and the trustees shall deposit the sum to be paid over to them in the Farmers' Loan and Trust Company in the
49 city of New York or in some other depository which shall be in their judgment safe, and the said moneys, together with all accumulations of interest thereon, if any, which may actually come into the hands or within the disposal of the trustees shall be laid out and invested by them in the purchase of bonds secured by these presents upon the most favorable terms on which they can be purchased, but not exceeding the par of the said bonds, and interest; and preparatory to such purchase of bonds, the said trustees shall give ten days' notice thereof

in one or more of the daily newspapers published in the city of New York and in the city of Urbana, in the State of Illinois, and shall make the said purchase at the lowest price or prices at which the bonds may be offered pursuant to such notice, or at such lower price or prices as the trustees may be able to obtain the same. After such notice
[18] or such purchase may be made, in the discretion of the trustees, at the broker's board in the city of New York, or at any public sale in said city, the expenses of said advertising and purchase being defrayed out of the moneys paid to the trustees as last
50 above mentioned, the bonds so purchased with the coupons thereto annexed shall be immediately cancelled by the said trustees, and a certificate of the numbers and amount of said bonds shall be immediately furnished by the said trustees to the president of the said Danville, Urbana, Bloomington & Pekin Railroad Co.

In case bonds secured by these presents cannot be purchased at par and interest as above provided, within three months after the expiration of the notice, as aforesaid, then the said trustees may, in their discretion, invest the said sinking fund moneys in such securities as may, from time to time, be recommended to them by the president of the said Danville, Urbana, Bloomington and Pekin Railroad Co. for the time being, or by the board of directors of said company.

ARTICLE EIGHTH. It is hereby declared and agreed that it shall
[19] be the duty of the trustees to exercise the power of entry hereby granted, or both, or to proceed by suit or suits, in equity or at law to enforce the rights of the bondholders in the several cases
51 of default herein specified, in the manner and subject to the qualifications herein expressed, upon the requisition, of the bondholders herein required, as follows:

First. If the default be as to interest or principal of any of the said bonds, or as to any payment into the sinking fund established by these presents, upon a requisition in writing signed by any holder or holders of not less than one hundred of the said bonds, and a proper indemnification by such holder or holders to the trustees against the costs and expenses to be by them incurred, it shall be the duty of the trustees to enforce the rights of the bondholders under these presents by entry, sale, or suit, or suits, in equity or at law, as they, being advised by counsel learned in law, shall deem most expedient for the interests of the holders of said bonds, subject to the power hereby declared of a majority
[20] in interest of the holders of said bonds by a requisition in writing under their hands and seals, to instruct *to instruct* the said trus-
52 tees to waive such default upon the actual repayment of the interest in arrear, with interest thereon, and the expenses incurred by reason thereof, or upon adequate indemnity, as aforesaid, to enforce the rights of the bondholders by reason of such default, provided that no action of the said trustees or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to effect any subsequent default, or to impair the rights resulting therefrom.

Second. If the default be in the omission of any act or thing required by these presents for the further assuring the title of the trustees to any property or franchises now possessed or hereafter acquired, or in the omissions to comply with any provisions of these presents to be observed, performed, or kept by the said company, then, and in either of such cases, the trustees may enforce, in their discretion and upon
[21] the requisition as aforesaid of a majority in amount of the holders of the bonds secured by these presents, it shall be their

duty to enforce the rights of the bondholders by reason of such
53 default, subject to the power hereby declared of a majority in interest of the holders of said bonds, by requisition, in writing, to instruct the said trustees to wa'ye such default, or upon adequate indemnity, as aforesaid, to enforce the rights of the bondholders by reason thereof, provided that no action of the said trustees or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

ARTICLE NINTH. If the parties of the first part shall well and truly pay, or cause to be paid, the principal of the said bonds when the same shall become , and all interest thereon when the same shall have become payable and shall have been demanded according to the tenor of said bonds and coupons thereto annexed, and shall also make
[22] the payments into the sinking fund aforesaid by these presents required, and comply with *with* all other requirements hereof according to the true intent and meaning of these presents, then and that case the estate, right, title, and interest of the said parties of the second part, and their successors in the trust hereby created,
54 shall cease, determine, and become void; and otherwise the same shall be and remain in full force and virtue.

ARTICLE TENTH. It is mutually agreed by and between the parties hereto that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust to be paid by the said co. or out of the income of the property, and for that purpose may at any time apply to the courts without notice to any person except the said parties of the first part, their successors or assigns; that said trustees or their successors may resign or discharge themselves of the trust created by these presents by notice in writing to the said railroad co. three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyance hereinafter required.

[23] That in case at any time hereafter the said trustee shall resign or become incapable to act in the said trust, their successor or successors shall be appointed by them with the consent of the said railroad co., and the trustee or trustees so appointed shall
55 thereupon become vested with all and singular the powers, authorities, and estates granted to or conferred upon the parties of the second part by these presents, and all the rights and interests adequate to enable them or him to execute the purposes of this trust without any further assurance or conveyance so far as such effect may be lawful, but the parties of the second part shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises to the trustees so appointed; provided, nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable to appoint in the manner before provided a successor in any vacancy which may have happened in said trust, application in behalf of all the
[24] holders of the bonds secured hereby may be made by the parties of the second part, or if the trust be wholly vacant by holders of the bonds secured hereby to the aggregate amount of one hundred thousand dollars to any circuit court of the United States for any judicial district in which any part of the aforesaid railroads
56 may be situated, or to any other court of competent jurisdiction for the appointment of a new trustee or new trustees, and the said parties of the first part for themselves, their successors and assigns,

in consideration of the premises and of one dollar to them duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenant and agree to and with the said parties of the second part and their successors or assigns that whenever and as often as the said parties of the first part, their successors or assigns shall hereafter acquire any lands or any equipment, or any other property or things of whatever name or nature for use in connection with the said railroad or of any part of either thereof, or of any
[25] other railroad which the said company is authorized by law to construct, or shall acquire any other property, rights, franchises, or things whatsoever, the said parties of the first part, their successors, and assigns shall and will acquire, possess, and hold the same and every part and parcel thereof upon and subject to the trusts of
57 this indenture until the conveyance thereof in pursuance of the covenant next hereinafter contained shall be made duly and delivered to the said parties of the second part or their successors in the trust by these presents created.

And the said parties of the first part for themselves, their successors and assigns, in consideration of the premises and of one dollar to them duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenant and agree to and with the said parties of the second part, their successors and assigns that the said parties of the first part, their successors and assigns shall and will from time to time, and at all times hereafter, and as often as heretofore requested by the trustees under this indenture, exe-
[26] cute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto the said parties of the second part and their successors in said trust upon the trust herein expressed the railroads, equipments, appurtenances, franchises, property, and things hereinbefore mentioned and to which the said company is or may hereafter for any reason become en-
58 titled, or which the said company, its successors, or assigns may in any manner acquire, and also all other property, rights, franchises, and things whatsoever which may hereafter be acquired by the said parties of the first part, their successors or assigns as by the said trustees or their counsel learned in law shall be reasonably advised, devised, or acquired, and it is also mutually understood and agreed between the parties hereto that the said parties of the second part and their successors in said trusts shall be accountable, liable, or responsible for reasonable care and diligence only in the performance of the trusts hereby created and in the management of the said estate and property in like manner as a bailee without reward, and shall not be accountable, liable, or responsible for the acts of any agent, deposi-
[27] tory, or substitute employed by him or them when such agent, depository, or substitute shall have been selected with reasonable discretion.

In witness whereof the said parties of the first part have caused their corporate seal to be hereto affixed and the same to be attested
59 by the signatures of their president and secretary, and the said parties of the second part have caused their corporate seal to be hereto affixed and the same to be attested by the signatures of their

president and secretary to evidence their acceptance of the trust hereby created the day and year first above written.

[SEAL.] C. R. GRIGGS,
Pres't of the Danville, Urbana, Bloomington and Pekin Railroad Company.

Attest:
W. J. EMMERTROUT,
Secretary.

Sealed and delivered in presence of Fred. N. Dodge as to each of the parties.

H. G. RALSTON. [L. S.]
Pres't of Far's' Loan and Trust Co.

GEO. P. FITCH, *Sec'y.*

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this thirteenth day of April, in the
[28] year of our Lord one thousand eight hundred and sixty-nine, in the city and county aforesaid, before me, Frederick N. Dodge, a commissioner residing in said city, duly appointed a commissioner by
60 the governor of the State of Illinois to take the acknowledgment and proof of the *of the* execution of deeds and other instruments in writing under seal, to be used and recorded in said State of Illinois, personally appeared C. R. Griggs, president of the Danville, Urbana, Bloomington and Pekin Railroad Co., who is personally known to me to be the person whose name is subscribed to the foregoing indenture or instrument as having executed the same as such president, and the the said C. R. Griggs, being by me duly sworn, did depose and say that he resided in the city of Urbana, county of Champaign, and State of Illinois; that he is the president of the said The Danville, Urbana, Bloomington and Pekin Railroad Co.; that the seal affixed to the foregoing indenture or instrument is the corporate seal of the said The Danville,
[29] Urbana, Bloomington and Pekin Railroad Co., and was so affixed by authority and order of the board of directors of said co., and that he signed his name thereto by like authority and order as president of said co.; and the said C. R. Griggs acknowledged to me
61 that he had executed the said indenture or instrument and signed, sealed, and delivered the same as the free and voluntary act and deed of the said The Danville, Urbana, Bloomington and Pekin Railroad Co. for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal as commissioner of the State of Illinois at my office in the city of New York, this 3rd day of May, A. D. 1869.

[L. S.] FREDERIC N. DODGE,
Commissioner of the State of Illinois in the City of New York.

STATE OF NEW YORK,
City and County of New York:

Be it remembered that on the 3rd day of May, one thousand eight hundred and sixty-nine, in the city and county aforesaid, be-
[30] fore me, Frederic N. Dodge, a commissioner residing in said city, duly appointed a commissioner by the governor of the State of Illinois to take the acknowledgement and proof of the execu-
62 tion of deeds and other instruments in writing under seal, to be used and recorded in said State of Illinois, personally ap-

peared W. J. Emmentrout, secretary of the Danville, Urbana, Bloomington & Pekin Railroad Co., who is personally known to me to be the person whose name is subscribed to the foregoing instrument or indenture as having executed the same as such secretary, and the said W. J. Emmentrout, being by me duly sworn, did depose and say that he resided in the city of Urbana, county of Champaign, and State of Illinois; that he is the secretary of the said The Danville, Urbana, Bloomington and Pekin Railroad Co.; that the seal affixed to the fore-
[31] going indenture or instrument is the corporate seal of the said The Danville, Urbana, Bloomington, and Pekin Railroad Co. and was so affixed by authority and order of the board of directors of said company, and that he signed his name thereto by like authority and order as secretary of said company; and the said W. J. Em-
63 mentrout acknowledged to me that he had executed the said indenture or instrument *is* the free and voluntary act and deed of the said The Danville, Urbana, Bloomington and Pekin Railroad Co. for the uses and purposes therein expressed.

In witness whereof I have hereunto set and affixed my official seal as commissioner of the State of Illinois, at my office in the city of New York this 3rd of May, A. D. 1869.

[32] [L. S.] FREDERIC W. DODGE,
Commissioner of the State of Illinois in the City of New York.

64 UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
Office of Secretary of State, ss:

I, Edward Rummel, secretary of state of Illinois, do hereby certify that Frederic W. Dodge, before whom the acknowledgement of the foregoing instrument was made, is now and was at the time of taking thereof a commissioner of this State in and for the city of New York, in the State of New York, duly authorized and empowered by law to take the same; that I have compared the signature to the same and the impression of the seal thereto attached with the official signature and seal of the said commissioner on file in this office, and verily believe them to be the genuine official seal and signature of the said commissioner.

In witness whereof I hereto set my hand and affix the great
[33] seal of State, at the city of Springfield, this 7th day of May, A. D. 1869.

[SEAL.] EDWARD RUMMEL,
Secretary of State.

The bonds issued upon this mortgage are duly stamped:
Filed May 6th, 1869.
Recorded May 28th, 1869.

65 STATE OF ILLINOIS,
McLean County, ss:

I, S. F. Dolloff, clerk and ex-officio recorder of said county, in the State aforesaid, do certify *that* the foregoing to be a true copy of trust-deed, as recorded in my office in book 27, page 424, McLean County, mortgage record. Witness my hand and seal this 1st day of Feb'y, A. D. 1875.

[34] S. F. DOLLOFF, *Clk,*
By WM. REEVES, *Dep'ty.*

(Indorsed:) Exhibit A. Filed Feb'ry 2nd, 1875. Wm. H. Harrison, cl'k.

66 *Exhibit B to bill.*

This indenture, made the first day of Oct., in the year of our Lord one thousand eight hundred and sixty-nine, between the Indianapolis, Bloomington Western Railway Co., a corporation of the States of Indiana and Illinois, the party of the first part, and the Farmers' Loan and Trust Co. of the city of New York, as trustees, of the second part.

Whereas the Indianapolis, Crawfordsville and Danville Railroad Co., a corporation of the State of Indiana, lately of that name, whose road extended from Indianapolis, in Indiana, to the eastern line of the State of Illinois, at a point near Covington, and the Danville, Urbana, Bloomington and Pekin Railroad Co., a corporation of the State of Illinois, lately of that name, whose road extended from Pekin, in the State of Illinois, eastward, to a point in the State line, where it joined with the Indianapolis, Crawfordsville and Danville Railroad Co. aforesaid, did, in the lawful exercise of the corporate
[35] powers under their charters and under the laws of the State of Indiana and Illinois, in due form of law, consolidate themselves to-
67 gether and become one single corporation under the name of the Indianapolis, Bloomington and Western Railway Co., and thereby and by the article of consolidation assume and become liable for all the debts existing against each and both of the original corporation' of which said consolidated corporation was composed, as by said articles of consolidation, duly filed of record, will more fully appear; and whereas the said two corporations, thus composing and being the party of the first part, have heretofore and before such consolidation become indebted by mortgage bonds made and issued by them respectively, and which indebtedness was made and still is a lien, on the respective parts of the road and property or consolidated and united in the amounts following, to-wit, The Indianapolis, Crawsfordville & Danville Railroad Co., for the sum of not exceeding one million five hundred thousand
[36] dollars (1,500,000), and the Danville, Urbana, Bloomington and Pekin Railroad Co. for the sum of not exceeding two millions of dollars (2,000,000).

And whereas at a meeting of the board of directors of the
68 said Indianapolis, Bloomington & Western Railway Co., the party of the first , held pursuant to law, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, it was recognized as expedient to reduce to a single form and class the two bonded debts aforesaid, and thereupon for that purpose the said board of directors resolved and passed a preamble and resolutions as follows, to wit: "That whereas in the opinion of this board it is expedient for this company to reduce to a single form and class all the bonded indebtedness of the Indianapolis, Bloomington & Western Railway Co., growing out of the two million dollars of mortgage bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Co., and one million five hundred thousand dollars of mortgage bonds issued by the Indianapolis, Crawfordsville and Danville Railroad Co.; and also
[37] to create a fund of one million five hundred thousand dollars to pay for new equipment and machinery to be provided for said Indianapolis, Bloomington & Western Railroad Co., all which said mortgage, bonds, and funds for new equipment and machinery amounts in the aggregate to five millions of dollars. It is therefore resolved by this board:

69 "1st. That a new series of five thousand bonds of this co. be prepared for issue and delivery, signed by the president and sec-

retary, and authenticated when issued by the certificate of trustee, each for the sum of one thousand dollars, to be numbered consecutively from one to five thousand, bearing date from the 1st of Oct., 1869, and payable to William Denison or bearer, in the city of New York, on the 1st day of Oct., 1909; principal and interest payable in gold, free of government tax, with interest warrants attached, signed by the secretary for the payment of interest thereon at the rate of seven per centum per annum in gold, payable in the city of New York on the successive first days of April and October of each year.

"2nd. That a deed of conveyance be prepared and executed, to
[38] be signed by the president and secretary, conveying the road and its appurtenances and its appendages, its franchises, equipments, property, tools, income, and interests, to a trustee to secure the payment of said bonds and interest warrants, and in such form and with such provisions as the president of this company may by executing
70 approve. That unless the board of directors otherwise direct, the said bonds shall be used for no purpose except to be negotiated, substituted, or exchanged for the present outstanding bonds hereinabove mentioned, and for the said new equipment and machinery to the amount of one million five hundred thousand dollars, and so that by the surrender and payment of said outstanding bonds the whole bond indebtedness of this company may be included and expressed in and by the bonds prepared under this resolution.

"3rd. That a sinking fund of twenty-five thousand dollars annually to provide for the payment of said bonds shall be formed by setting apart on the 1st day of Oct., 1872, and each and every year thereafter on the 1st day of Oct. the sum of twenty-five thousand dollars. This sinking fund shall be kept and invested by three commissioners, one of whom shall be the president of the company, the other two shall be members of this board, one of whom shall be changed annually.
[39] They shall invest the said fund in the bonds of this company, otherwise at the discretion of the commissioners, in stocks of the United States or of the States of Indiana and Illinois.
71 "4th. That the commisioners shall frame rules for the safety and management of the said trust and file the same with the treasurer and shall annually file their report with the treasurer showing the condition, amount, and investment of said sinking fund.

"And whereas the said Indianapolis, Bloomington & Western Railway Co., party of the first part, both in accordance with said preamble and resolutions, made and executed bonds to the amount of five million dollars of the numbers, form, designation, and character prescribed by said resolution, and hold the same to be issued and used for the purposes and manner therein described: Now therefore in further pursuance of said resolution and to the end and purpose of securing the payment of the said five million dollars of bonds and every part
[40] thereof, this indenture witnesseth that the said Indianapolis, Bloomington & Western Railway Co., party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of
72 the second part, trustees as aforesaid, doth hereby grant, bargain, sell, and convey to the said Farmers' Loan and Trust Company of the city of New York, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railway of the party of the first part, lying, being, and extending from its terminus in the city of Indianapolis, in the State of Indiana, through Crawsfordville, in said last-mentioned State, westward, to the

State of Illinois, and through Danville, Urbana, and Bloomington, in said State of Illinois, further westward to Pekin, altogether being in length of railways about two hundred and ten miles, about ninety-three miles thereof being in the State of Indiana and about one hundred and seventeen miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels, used in or connected with the operation of said railway, including all rents, reservations, and reversions of every
[41] nature and kind whatever, including all the property between said terminal points, which the said party of the first part now has, owns, and possesses, or may hereafter acquire: To have and to hold the said railway, premises, and rights hereby conveyed or
73 so intended to be unto the said party of the second part and their successors and assigns for the sole use and benefit and behoof of the said trustees, their cestuis que trust, their successors and assigns forever, but upon the trusts and the uses following, that is to say:

"First. That this conveyance is for and shall be by the said party of the second part, their successors and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued as aforesaid by the party of the first part and for enforcing the stipulations of said company as to said issue of bonds and the disposal thereof and securing the same and the final payment thereof in their true interest and meaning whether contained in said bonds or the interest war-
[42] rants attached to them thereto or in this deed.

"Second. That for the better assuming and confirming the title and powers of the said party of the second part, their successors, and assigns, and the said premises and property hereby conveyed and
74 in and to any premises and property or rights hereafter accruing or to be acquired by said party of the first part appurtenant to said railway, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors, and assigns will and shall as often as may be lawfully required by the party of the second part, or their successors or assigns holding the above granted trust, do such acts and make such other and further conveyances and assurances in law as such party of the second part shall, by counsel learned in the law be advised, necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

"Third. That if the *first* party of the first part, their successors, or assigns shall well and truly pay to the owners or holders of said five million dollars of bonds so to be issued and hereby secured
[43] the respective sums of money and interest due and accruing on said bonds on the days and times therein mentioned and according to the tenor and effect of said bonds then and thenceforth this indenture and all the estate hereby granted shall become and be
75 utterly void and of no further effect, and the same shall be by such payment wholly annulled and satisfied without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and satisfied in any record of the same as so satisfied by the party of the second part or their successors.

"Fourth. That until default shall have been made by party of the first part in the payment of principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and *and* permitted to possess,

use, occupy, manage, and operate the said railway property and franchises and appurtenances, and to renew, replace, and repair the
[44] same and every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

"Fifth. In case default shall be in the payment of any interest of the aforesaid bonds issued or to be issued, according to the tenor
76 of the coupons thereto annexed or of the provisions hereof, or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part and their successors and assigns that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to them or to their agent the actual possession of the herein granted and demised railway and premises, together with all the books, records, papers, accounts, and money of said co., and all management and
[45] control thereof, and that all the expense of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the income, and profits thereof, and if said property shall, after such taking possession thereof, be sold, then from the sale thereof, or such expenses may be paid from the sale of any per-
77 sonal property as the said trustee may deem proper, and that said party of the second part and their successors, having taken such possession, may manage, operate, and control said road and property and all of its affairs, and appoint all needful agents and employees for that purpose, and pay the same and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in default according to the true intent and tenor of the said bonds and the coupons annexed and to the terms of this *of this* deed, until such default shall have been satisfied, if such income and profits will satisfy the same, first paying all expenses of such possession and management, and all taxes, assessments, charges, and prior liens on said property and a just compensation for their own services as such trustee.

[46] "But in any and all cases of such taking of possession by said party of the second part and paying up any such default and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money, and accounts into the possession of the party of the first
78 part, provided that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least one-half of all the said issue of bonds which shall then be unpaid and outstanding to make such demand and to take such possession of said road and property.

"Sixth. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part or their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of to the highest bidder all and singular the premises hereby conveyed or intended so to be, as an entirety, at public auction, in the city of Indianapolis, Indiana, at such time as said party of the sec-
[47] ond part may appoint, first having demanded of the party of the first part full payment of all money then in default, and also

first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold by advertisements thereof in three newspapers, one published in the State of
79 Illinois, one published in the State of Indiana, and one published in the city of New York, and to adjourn said sale from time to time in their discretion, and if adjourned to make such sale in manner aforesaid without further notice at the time and place to which it may be so adjourned, and upon such sale, and receiving the purchase money therefor, to convey the same by good and sufficient conveyances to the purchaser or purchasers, and such sale and conveyance so made shall convey all the rights, title, interest, estate and property of the said party of the first part of, in, and to the said road, premises, franchises, and property to the said purchaser in fee simple forever, and shall be a perpetual bar, both in law and equity, against the said party of the first part, their successors, and assigns, and
[48] against all and every person claiming or to claim the said premises, or any part thereof, under them forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and
80 maintaining the *the* said railway and property, and in managing its business and affairs while in possession, and all payment for taxes, charges, assessments, and liens prior to the lien of these presents on said premises, or any part thereof, as well as reasonable compensation for their services, to apply the proceeds of such sale to the payment of the interest of said five millions of dollars of bonds, or so many of them as shall have been issued by said party of the first part and be then outstanding pro rata until all such interest shall be paid, and afterwards apply the remainder of the payment of the principal of said bonds pro rata until such principal shall be paid, and if any surplus be after paying all of said matters to pay such surplus to the party of the first part, and such payment shall be so made on said bonds, whether the same shall become due or not at the time of such sale; provided that such trustee
[49] or trustees may in their discretion the said premises as an entirety, subject to any or all mortgage liens on the same, or any part thereof, which may at any time have priority over the lien of these presents, and on doing so shall make legal distribution of the proceeds of such sale accordingly.

81 "It is hereby declared that the receipt of said trustee or trustees making any such sale to the purchaser of the premises for the purchase money shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after payment of said purchase money and obtaining such receipt therefor, be liable or in any way bound to see said purchase money applied to this trust, or otherwise in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

"Seventh. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, the said trustee or trustees may bid for and purchase or cause to be purchased the property so sold, or any part of it, in behalf of the holders of
[50] said bonds secured by this deed, then outstanding, at a reasonable price if only a part be sold, but if the whole property be sold, at a price not exceeding the whole amount of said bonds and interest then outstanding.

"Eight'. If default be made by the party of the first part in the
82 payment of any half year's interest on any of the said bonds, and

the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand without the consent of the holders of such coupon or bond, then and thereupon the principal of all of said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and the said party of the second part may so declare the same and notify the party of the first thereof, and, upon the written request of the holders of a majority of the paid bonds then outstanding, shall proceed to collect both principal and interest of all such bonds outstanding, by foreclosure and sale of said property or otherwise, as herein provided.

"Ninth. It is hereby mutually agreed by the parties hereto that
[51] the trustees shall be responsible only for gross negligence and willful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first
83 duly and satisfactorily indemnified against the same by one or more of said bondholders. In case of the resignation or inability to act of the trustee aforesaid, the board of directors may appoint a successor, and failing to so appoint, any court of competent jurisdiction in either of the said States may appoint a trustee to fill such vacancy, on the application of the holders of the one-sixth part of the bonds hereby intended to be secured, then outstanding, and such appointment by the board or by such court shall invest the trustee so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

"And the said party of the first part hereby further covenants and agrees with the party of the second part, and their successors,
[52] and with the holders of each *of each* and all of the said issue of five millions of dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the redemption of such bonds, and each of them, by setting aside
84 and depositing with three commissioners, to be appointed by the party of the first part for that purpose, from and after the first day of Oct., in the year of our Lord one thousand eight hundred and seventy-two, and annually thereafter until the maturity of said bonds, the sum of twenty-five thousand dollars ($25,000). Such sinking-fund moneys shall, from time to time, under the order of the party of the first part, be invested in the purchase of the bonds so issued, or in bonds of the Government of the United States, or of the States of Indiana or Illinois, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking fund and compounded therein continually, and reinvested in like manner with the other money of said fund. That the board of directors of said railway co., party of the first part, shall have entire control over the management of said sinking fund,
[53] and every person in charge of or connected with the same, and shall, from time to time, direct in what bonds and securities it shall be invested, and at what prices or rates, and how it shall be
85 kept, and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for safe-keeping.

"Every bond of the said issue of five millions of dollars, which may be purchased and held by said sinking fund, shall remain in full force until the whole of such issue shall have matured or shall have been so ab-

sorbed or otherwise redeemed by said party of the first part, or until cancelled as hereinafter provided, and the interest on such bonds held by said sinking fund shall be paid by said railway company regularly as the interest on its other similar bonds is paid. And the said party of the first part does hereby further covenant to and with the party of the second part and their successors, trustees as aforesaid, and to and with every person who shall be the holder of any of the said issue
[54] of five millions of dollars of bonds; that of the said issue the sum of three millions five hundred dollars numbered from 1501 to 5000, inclusive shall be set aside and appropriated and used only
86 in exchange for and to satisfy the said outstanding first-mortgage bonds which are liens on said property, or some part thereof as hereinbefore mentioned and recited, and which were before said consolidation made and issued by the companies heretofore owning parts of said railway, and to the liens of which the said several parts of said railway are still subject. That such payment or exchange of said three millions five hundred thousand dollars of bonds shall be made on such terms and at such times as may be ordered by the board of directors of said company, but that none of said sum of three millions five hundred thousand dollars of bonds hereby secured shall be exchanged or paid out for the bonds so to be satisfied and redeemed by them as aforesaid, at less than dollar for dollar. That said three millions five hundred thousand dollars, said issue of five millions dollars hereby
[55] secured or intended so to be shall not be issued, used, disposed of, or paid out for any other purpose or any other pretense whatever, and if they cannot be so paid out or exchanged they shall be
87 destroyed. The said party of the first part may, nevertheless, in order to make such redemption or exchange in any case, sell any bond or bonds of said amount for money, and with the proceeds purchase and redeem not less than an equal amount of the bonds so to be paid and redeemed by them. The board of directors of said co., party of the first part, shall appoint three suitable persons to act as bond fund commissioners, who shall have the sole charge and custody of the said three millions five hundred thousand dollars of said bonds, and of the issuing, exchanging, and disposing of the same in the redemption of the first-mortgage bonds they were issued to redeem. They shall be governed in all respects by the orders of the board and these presents, and shall report their action therein to the board of directors of
[56] said co. as often as required. When any one of said several first-mortgage bonds so herein provided to be redeemed shall be so exchanged for and received by said commissioners, the same shall not be cancelled until all of the class and issue of bonds to which it belongs shall have been redeemed by exchange or otherwise, but
88 shall be negotiated by them as an exchanged bond, with the name of the owner who exchanged it, and the number and amount of the bond given in exchange for it, and filed away and safely kept by said commissioners for the following purpose or use, to wit:

"In case suit for default in the payment of interest or principal of any of the class of bonds so exchanged, be instituted for the foreclosure and sale of the railway and property of the company, or in case of the foreclosure and sale of the railway and property of the co., the holders of any of the consolidated bonds received in exchange for any bond of the class on which said suit is instituted, or foreclosure and sale made, shall have the privilege or returning to the bond commissioners the consolidated bond so received by him, and receive therefor the bond for which he exchanged the same, equalizing the interest, and on

[57] such re-exchange said first mortgage bond shall be and remain in full force, and with its existing lien and enure in all respects to the person who exchanged it, as fully as if it had never been exchanged. Whenever all of the said original mortgage bonds of any one
89 issue or class shall have been exchanged for or redeemed, said commissioners shall cancel and annul them all, and notify said board of directors thereof, and thereupon the said party of the first part shall cause such mortgage to be cancelled and satisfied on the records thereof. It is understood and agreed by and between the parties hereto, that no individual liability shall attach to any stockholders of the party of the first part, in behalf of the holders of any of the bonds secured by this mortgage or deeds of trust, and that the holders of bonds rely solely on the property, rights, and franchises of the party of the first part, covered by this mortgage, and the stipulations and covenants of the said party of the first part herein contained, for the payment of the principal and interest of the bonds so held by them.

In witness whereof, the said Indianapolis, Bloomington &
[58] "Western Railway Co., the party of the first part, has cause' these presents to be executed and signed by the president of their company, and attested by their secretary in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, and the said The Farmers' Loan
90 and Trust Co. have caused their corporate seal to be hereto affixed, and the same to be attested by the signatures of their president and secretary, to evidence their acceptance of the trust hereby created, the day and year first above written."

THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY CO.,
[SEAL.] By C. R. GRIGGS, *President.*
Attest:
A. P. LEWIS, *Secretary.*
[SEAL.]
R. G. RALSTON,
Pres't Farmers' Loan & Trust Co.
GEO. P. FITCH,
Sec'y F. L. & T. Co.

The bonds herein mentioned will be duly stamped, when issued, with proper and sufficient U. S. revenue stamps.

STATE OF ILLINOIS,
County of Champaign, City of Urbana, ss:

Be it remembered, that on this 12th day of Oct., in the year
[59] of our Lord one thousand eight hundred and sixty-nine, in city and county aforesaid, before me the undersigned a clerk of the circuit court in and for said county, personally appeared C. R. Griggs, to me known to be the president of the Indianapolis, Bloom-
91 ington & Western Railway Co., and who is personally known to me to be the person whose name is subscribed to the foregoing instrument, as having executed the same as such president; and the said C. R. Griggs, being by me duly sworn, did depose and say that he resides in the city of Urbana, that he was the president of Indianapolis, Bloomington & Western Railway Co.; that the seal affixed to the foregoing instrument was the corporate seal of the said Indianapolis, Bloomington & Western Railway Co., and was so affixed by authority and order of the board of directors of said company, and that he signed

his name thereto by like authority and order as president of said co.; and the said C. R. Griggs, acknowledged to me that he had executed the said instrument, and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Indianapolis, Bloomington & Western Railway Company, for the uses and purposes therein
[60] expressed. In testimony whereof, I have hereunto set my hand and affixed my official seal as such clerk as aforesaid, at the city
92 of Urbana, in the county of Champaign and State of Illinois, this 12th day of October, in the year 1869.

[SEAL.] E. T. WHITCOMB,
Clerk Circuit Court.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, in the aforesaid city and county of New York, before me, Frederic N. Dodge, a commissioner residing in said city, duly appointed a commissioner by the governor of the State of Illinois, to take the acknowledgement and proof of the execution of deeds and other instrument' in writing, under seal, to be used and recorded in said State of Illinois, personally appeared R. G. Ralston, president of the Farmers' Loan and Trust Company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as having executed the
[61] same as such president, and the said R. G. Ralston being by me duly sworn, did depose and say that he resided in the city of New York; that he was the president of the said Farmers' Loan and
93 Trust Co.; that the seal affixed to the foregoing instrument was the corporate seal of the said Farmers' Loan and Trust Co., and was so affixed by authority and order of the board of directors of said co., and that he signed his name thereto by like authority and order as president of said co.; and the said R. G. Ralston acknowledged to me that he had executed the said instrument, and signed and sealed the same as the free and voluntary act and deed of the said Farmers' Loan & Trust Co., for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my official seal, as commissioner of the said State of Illinois, at my office, in the city of New York, this twentieth day of October, A. D. 1869.

[SEAL.] FREDERIC N. DODGE,
Commissioner of the State of Illinois, in and for the City and County of New York.

[62] UNITED STATES OF AMERICA, STATE OF ILLINOIS,
Office of Secretary of State, ss:

I, Edward Rummel, secretary of state of Illinois, do hereby certify that Frederic N. Dodge, before whom the acknowledgement
94 of the foregoing instrument was made, is now, and was at the time of taking thereof, a commissioner of this State, and for the city of New York, in the State of New York, duly authorized and empowered by law to take the same; that I have compared the signature to the same, and the impression of the seal thereto attached, with the official signature and seal of the said commissioner on file in this office, and verily believe them to be the genuine official seal and signature of the said commissioner.

In witness whereof I hereto set my hand affix the great seal of the State, at the city of Springfield, this 22nd day of October, A. D. 1869.

[SEAL.] EDWARD RUMMEL,
Secretary of State.

STATE OF NEW YORK,
City and County of New York, ss:

[63] Be it remembered that on this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, in the aforesaid city and county of New York, before me, Frederic N. Dodge, a commissioner residing in said city, duly appointed a commissioner by the governor of the State of Indiana to take the acknowledgement and proof of the execution of deeds and other instru-
95 ments in writing, under seal, to be used and recorded in said State of Indiana, personally appeared R. G. Ralston, president of the Farmers' Loan and Trust Co., who is personally known to me to be the person whose name is subscribed to the foregoing instrument, as having executed the same as such president, and the said R. G. Ralston, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the president of the Farmers' Loan and Trust Co.; that the seal affixed to the foregoing instrument was the corporate seal of the said Farmers' Loan & Trust Co., and was so affixed by authority and order of the board of directors of said co., and that he signed his name thereto by like authority and order, as president of said co.; and the said R. G. Ralston acknowledged to me that
[64] he had executed the said instrument and signed and sealed the same as the free and voluntary act and deed of the said Farmers' Loan and Trust Co., for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed
96 my official seal as a commissioner of the said State of Indiana, at my office in the said city of New York, this twentieth day of Oct., A. D. 1869.

[SEAL.]

FREDERIC N. DODGE,
Commissioner for the State of Indiana in the City & County of New York.

STATE OF INDIANA,
Office of Secretary of State, ss:

I, M. F. A. Hoffman, secretary of the State of Indiana, do hereby certify that Frederick N. Dodge, whose *whose* signature appears to the certificate of attestation, last aforesaid, was, at the time of signing the same, to wit, the twentieth day of Oct., 1869, A. D., a commissioner of deeds for the State of Indiana in the State of New York, duly commissioned and qualified; that I believe his signature to be genuine; that
[65] his said attestation is in due form of law, and that full faith and credit are due to the same.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 23rd day of Oct., A. D. 1869.

[SEAL.]

M. F. A. HOFFMAN,
Secretary of State.

97 Filed Oct, 28th, 1869.
Recorded Nov'r 1st, 1869.

STATE OF ILLINOIS,
McLean County, ss:

I, Samuel F. Dolloff, clerk of the circuit court & ex officio recorder in and for said county, in the State aforesaid, do certify that the foregoing is a true copy of a trust deed, as appears of record in book 33, page 26, &c., of the McLean County mortgage records.

Witness my hand and official seal this 30th day of January, A. D. 1875.

[SEAL.] S. F. DOLLOFF, *Clerk*,
[66] By W. M. REEVES, *Dep'ty.*

(Indorsed:) Exhibit B. Filed Febr'y 2, '75. Wm. H. Harrison, cl'k,

98 *Exhibit C to bill.*

The Indianapolis, Bloomington & Western Railway Co., to The Farmers' Loan & Trust Co. of New York. Mortgage.

OCTOBER 1ST, 1869.

This indenture made the first day of October, in the year of our Lord one thousand eight hundred and sixty-nine, between the Indianapolis, Bloomington & Western Railway Company, a corporation of the States of Indiana and Illinois, the party of the first part, and the Farmers' Loan and Trust Company of the city of New York, as trustee, of the second part.

Whereas the Indianapolis, Crawfordsville and Danville Railroad Company, a corporation of the State of Indiana, lately of that name, whose road extended from Indianapolis in Indiana to the eastern line of the State of Illinois at a point near Covington and the Danville, Urbana, Bloomington and Pekin Railroad Company, a corporation of the State of Illinois, lately of that name, whose road extended from Pekin, in the State of Illinois, eastward to a point in the State line where it joined with the Indianapolis, Crawfordsville and Danville Railroad, aforesaid, did, in the lawful exercise of their corporate power un-
99 der their charters and under the laws of the States of Indiana and Illinois, in due form of law consolidate themselves together and become one single corporation, under the name of the Indianapolis, Bloomington and Western Railway Company, and thereby, and by the articles of consolidation, assume and become liable for all the debts existing against each and both of the original corporations of which said consolidated corporation was composed, as by said articles of consolidation duly filed of record will more fully appear.

And whereas the said two corporations thus composing and being the party of the first part have heretofore, and before such consolidation, become indebted by mortgage bonds made and issued by them respectively, and which indebtedness was made and still is a lien on the respective parts of the road and property so consolidated and united in the amounts following, to wit: The Indianapolis, Crawfordsville and Danville Railroad Company for the sum of not exceeding one million five hundred thousand dollars ($1,500,000), and the Danville, Urbana, Bloomington and Pekin Railroad Company for the sum of not exceeding two millions of dollars ($2,000,000); and whereas at a meeting of the board of directors of the said Indianapolis, Bloomington and
100 Western Railway Company, the party of the first , held pursuant to law, on the eighth day of September, in the year one thousand eight hundred and sixty-nine, it was recognized as expedient to reduce to a single form and class the two bonded debts aforesaid, and thereupon, for that purpose, the said board of directors resolved and passed a preamble and resolution as follows, to wit:

That where as in the opinion of this board it is expedient for this company to reduce to a single form and class all the bonded indebtedness of the Indianapolis, Bloomington and Western Railway Company

growing out of the two million dollars of mortgage bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, and one million five hundred thousand dollars of mortgage bonds issued by the Indianapolis, Crawfordsville and Danville Railroad Company, and also to create a fund of one million five hundred thousand dollars to pay for new equipment and machinery to be provided for said Indianapolis, Bloomington and Western Railway Company, all which said mortgage bonds and funds for new equipments and machinery amounts, in the aggregate, to five millions of dollars:

It is therefore resolved by this board—

101 1st. That a new series of five thousand bonds of this company be prepared for issue and delivery, signed by the president and secretary, and authenticated, when issued, by the certificate of a trustee, each for the sum of one thousand dollars, to be numbered consecutively from one to five thousand, bearing date the 1st of October, 1869, and payable to William Dennison, or bearer, in the city of New York, on the first day of October, 1909, principal and interest payable in gold, free of government tax, with interest warrants thereto attached, signed by the secretary, for the payment of interest thereon at the rate of seven per centum per annum in gold, payable in the city of New York, on the successive first days of April and October of each year.

2nd. That a deed of conveyance be prepared and executed, to be signed by the president and secretary, conveying the road and its appurtenances, and its appendages, its franchises, equipments, property, tools, income, and interests to a trustee, to receive the payment of said bonds and interest warrants, and in such form and with such provisions as the president of this company may by executing approve. That

102 unless the board of directors otherwise direct, the said bonds shall be used for no purpose except to be negotiated, substituted, or exchanged for the present outstanding bonds herein above mentioned and for the said new equipment and machinery to the amount of one million five hundred thousand dollars, and so that by the surrender andpayment of said outstanding bonds the whole bond indebtedness of this company may be included and expressed in and by the bonds prepared under this resolution.

3rd. That a sinking fund of twenty-five thousand dollars annually, to provide for the payment of said bonds, shall be formed by setting apart on the first day of October, 1872, and each and every year thereafter on the first day of October, the sum of twenty-five thousand dollars. This sinking fund shall be kept and invested by three commissioners, one of whom shall be the president of the company, the other two shall be members of this board, one of whom shall be changed annually. They shall invest the said fund in the bonds of this company; otherwise, at the discretion of the commissioners, in stocks of the United States or of the States of Indiana and Illinois.

4th. That the commissioners shall frame rules for the safety and management of the said trust, and file the same with the treasurer, and shall annually file their report with the treasurer showing

103 the condition, amount, and investment of said sinking fund.

And whereas the said Indianapolis, Bloomington and Western Railway Company, party of the first part, hath, in accordance with the said preamble and resolutions, made and executed bonds to the amount of five million dollars, of the numbers, form, designation, and character

prescribed by said resolution, and hold the same to be issued and used for the purposes and manner therein described.

Now, therefore, in further pursuance of said resolution, and to the end and purpose of securing the payment of the said five million dollars of bonds and every part thereof, this indenture witnesseth that the said Indianapolis, Bloomington and Western Railway Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees as aforesaid, doth hereby grant, bargain, sell, and convey to the said Farmers' Loan and Trust Company, of the city of New York, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railway of the party of the first part, lying, being, and extending from its terminus in the city of
104 Indianapolis, in the State of Indiana, through Crawfordsville, in said last-mentioned State, westward to the State of Illinois, and through Danville, Urbana, and Bloomington, in said State of Illinois, further westward to Pekin, altogether being in length of railways about two hundred and ten miles, about ninety-three miles thereof being in the State of Indiana, and about one hundred and seventeen miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of said railway, including all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which the said party of the first part now has, owns, and possesses, or may hereafter acquire.

To have and to hold the said railway property, premises, and rights hereby conveyed, or so intended to be, unto the said party of the second part, and their successors and assigns, for the sole use, benefit, and behoof of the said trustees, their cestuis que trust, their successors and assigns forever, but upon the trusts and to the uses following, that is to say—

First. That this conveyance is for and shall be by the said party of the second part, their successors and assigns, held, used, and
105 owned, solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued, as aforesaid, by the party of the first part, and for enforcing the stipulations of said company, as to said issue of bonds, and the disposal thereof, and securing the same, and the final payment thereof, in their true intent and meaning, whether contained in said bonds or the interest warrants attached to them, or in this deed.

Second. That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed and in and to any premises and property or rights hereafter accruing or to be acquired by said party of the first part, appurtenance to said railway which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as may be lawfully required by the party of the second part or their successors or assigns holding the above granted trust, do such acts and make such other and further conveyances and assurances in law as such party of the second part shall by counsel learned in the law be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

106 Third. That if the said party of the first part, their successors or

assigns, shall well and truly pay to the owners or holders of said five million dollars of bonds so to be issued and hereby secured the respective sums of money and interest due and accruing in said bonds on the days and times therein mentioned, and according to the tenor and effect of said bonds then and thenceforth, this indenture and all the estate hereby granted shall become and be utterly void and if no further effect, and the same shall be by such payment wholly annulled and satisfied without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or their successors.

Fourth. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, shall be suffered and permitted to possess, use, occupy, manage, and operate the said railway property and franchises and appurtenances,
and to renew, replace, and repair the same, and every part there-
107 of, and take and receive and use the tolls, rents, issues, incomes,
and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

Fifth. In case default shall be made in the payment of any interest of the aforesaid bonds issued, or to be issued, according to the tenor of the coupons thereto annexed, or of the provisions hereof, or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part, and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to them, or to their agent, the actual possession of the herein-granted and demised railway and premises, together with all the books, records, papers, accounts, and money of said company, and all management and control thereof, and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from
the incomes and profits thereof. And if said property shall, after
108 such taking possession thereof, be sold, then from the sale thereof,
or such expenses may be paid from the sale of any personal property as the said trustees may deem proper, and that said party of the second part, and their successors, having taken such possession, may manage, operate, and control said road and property, and all its affairs, and appoint all needful agents and employés for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in default according to the true intent and tenor of the said bonds and the coupons annexed, and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same, first paying all expenses of such possession and management and all taxes, assessments, charges, and prior liens on said property and a just compensation for their own services as such trustees; but in any and all cases of such taking possession by said party of the second part and paying up any such default and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money and accounts into the possession

of the party of the first part; provided, that no such demand for such possession shall be made by said trustee or trustees until they
109 shall have been required by the holders of at least the one-half of all the said issue of bonds which shall then be unpaid and outstanding to make such demand and to take such possession of said road and property.

Sixth. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part, or their successors in trust after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of to the highest bidder all and singular the premises hereby conveyed, or intended so to be, as an entire*ly* at public auction, in the city of Indianapolis, Indiana, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default, and also first having given sixty days' notice of such time and place of sale and a full description of the property so to be sold, by advertisements thereof in three newspapers, one published in the State of Illinois, one published in the State Indiana, and one published *and one published* in the city of New York, and to adjourn said sale from time to time in their discretion, and *adjourned* to make such sale manner aforesaid, without further notice, at the time and place to which it may be so adjourned, and upon such sale, and receiving the purchase-money therefor, to convey the
110 same by good and *and* sufficient conveyances to the purchaser or purchasers, and such sale and conveyance so made shall convey all right, title, interest, estate, and property of the said party of the first part of, in, and to the said road, premises, franchises, and property to the said purchaser in fee-simple forever, and shall be a perpetual bar, both in law and equity, against the said party of the first part, and against their successors and assigns, and against all and every person claiming, or to claim, the said premises, or any part thereof, under them forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities, which may have been made or incurred by the party of the second part in operating, controlling, and maintaining the said railway and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, assessments, and liens prior to the lien of these presents on said premises, or any part thereof, as well as reasonable compensation for their services, to apply the proceeds of such sale to the payment of the interest of said five millions of dollars of said bonds, or so many of them as shall have been issued by said party of the first part, and be then outstanding, pro rata, until all such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds pro rata, until such principal shall be paid; and if any surplus be , after paying all of said
111 matters, to pay such surplus to the party of the first part, and such payment shall be so made on said bonds whether the same shall have become due or not at the time ot such sale, provided that said trustee or trustees may in their discretion sell the said premises as an entirety, subject to any or all mortgage liens on the same, or any part thereof, which may at the time have priority over the lien of these presents, and in doing so shall make legal distribution of the proceeds of such sale accordingly.

It is hereby declared that the receipt of said trustee or trustees, making any such sale to the purchaser of the premises for the purchase-

money, shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after payment of said purchase-money and obtaining such receipt therefor, be liable or in any way bound to see said purchase-money applied to this trust or otherwise, or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

Seventh. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents or by judicial authority, the said trustee or trustees may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of the holders of said bonds secured by this deed, then outstanding, at a reasonable price, if
112 only a part be sold, but if the whole property be sold at a price not exceeding the whole amount of said bonds and interest then outstanding.

Eighth. If default be made by the party of the first part in the payment of any half year's interest or any of said bonds, and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and the said party of the second *party of the second* part may so declare the same and notify the party of the first part thereof, and upon the written request of the holders of a majority of the said bonds then outstanding shall proceed to collect both principal and interest of all such bonds outstanding by foreclosure and sale of said property or otherwise, as herein provided.

Ninth. It is hereby mutually agreed by the parties hereto that the trustees shall be responsible only for gross negligence and wilful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satis-
113 factorily indemnified against the same by one or more of said bondholders.

In case of the resignation or inability to act of the trustee aforesaid, the board of directors may appoint a successor, and failing to so appoint any court of competent jurisdiction in either of the said States may appoint a trustee to fill such vacancy on the application of the holders of one-sixth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

And the said party of the first part hereby further covenants and agrees with the party of the second part and their successors, and with the holders of each and all of the said issue of five millions of dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the redemption of such bonds and each of them by setting aside and depositing with three commissioners to be appointed by the party of the first part for that purpose from and after the first day of October, in the year one thousand eight hundred and seventy-two, and annually thereafter until the maturity of said bonds the sum of twenty-five thousand dollars ($25,000). Such
114 sinking fund moneys shall from time to time, under the orders of the party of the first part, be invested in the purchase of the

bonds as issued or in bonds of the Government of the United States or of the States of Indiana or Illinois, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking fund and compounded therein continually and reinvested in like manner with other money of said fund.

That the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund and every person in charge of or connected with the same, and shall from time to time direct in what bonds or securities it shall be invested and at what prices or rates, and how it shall be kept and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for safekeeping.

Every bond of the said issue of five millions of dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been so absorbed or otherwise redeemed by said party of the first part, or until cancelled, as hereinafter provided; and the interest on such
115 bonds held by said sinking fund shall be paid by said railway company regularly as the interest on its other similar bonds is paid.

And the said party of the first part does hereby further covenant to and with the party of the second part and their successors, trustees as aforesaid, and to and with every person who shall be the holder of any one of the said issue of five millions of dollars of bonds that of the said issue the sum of three millions five hundred thousand dollars, numbered from No. 1501 to 5000, inclusive, shall be set aside and appropriated and used only in exchange for and to satisfy the said outstanding first mortgage bonds which are liens on said property or some part thereof, as hereinbefore mentioned and recited, and which were, before said consolidation, made and issued by the companies heretofore owning parts of said railway, and to the liens of which the said several parts of said railway are still subject; that such payment or exchange of said three millions five hundred thousand dollars of bonds shall be made on such terms and at such times as may be ordered by the board of directors of said company, but that none of said sum of three millions five hundred thousand dollars of bonds hereby secured shall be exchanged or paid out for the bonds so to be satisfied and re-
116 deemed by them as aforesaid at less than dollar for dollar; that said three million five hundred thousand dollars of said issue of five millions dollars hereby secured, or intended so to be, shall not be issued, used, disposed of, or paid out for any other purpose or any other pretense whatever; and if they cannot be so paid out or exchanged they shall be destroyed.

The said party of the first part may nevertheless, in order to make such redemption or exchange in any case, sell any bond or bonds of said amount for money, and with the proceeds purchase and redeem not less than an equal amount of the bonds so to be paid and redeemed by them. The board of directors of said company, party of the first part, shall appoint three suitable persons to act as bond-fund commissioners, who shall have the sole charge and custody of the said three millions five hundred thousand dollars of said bonds and of the issuing, exchanging, and disposing of the same in the redemption of the first mortgage bonds they were issued to redeem. They shall be governed in all respects by the orders of the board and these presents, and shall

report their action therein to the board of directors of said company as often as required.

When any one of said several first mortgage bonds so herein provided to be redeemed shall be so exchanged for and received by
117 said commissioners, the same shall not be cancelled until all of the class and issue of bonds to which it belongs shall have been redeemed by exchange or otherwise, but shall be registered by them as an exchanged bond, with the name of the owner who exchanged it, and the number and amount of the bond given in exchange for it, and filed away and safely kept by said commissioners for the following purpose, but for no other purpose or use, to wit: In case suit for default in the payment of interest or principal or any of the class of bonds so exchanged be instituted for the foreclosure and sale of the railway and property of the company, or in case of the foreclosure and sale of the railway and property of the company, the holders of any of the consolidated bonds received in exchange for any bond of the class on which said suit is instituted or foreclosure and sale made shall have the privilege of returning to the bond commissioners the consolidated bond so received by him, and receive therefor the bond for which he exchanged the same, equalizing the interest; and on such re-exchange said first mortgage bond shall be and remain in full force and with its existing lien and enure in all respects to the person who exchanged it as fully as if it had never been exchanged.

Whenever all of the said original mortgage bonds of any one issue or class shall have been exchanged for or redeemed said com-
118 missioners shall cancel and annul them all, and notify said board of directors thereof, and thereupon the said party of the first part shall cause such mortgage to be cancelled and satisfied in the records thereof. It is understood and agreed by and between the parties hereto that no individual liability shall attach to any stockholders of the party of the first part in behalf of the holders of any of the bonds secured by this mortgage or deed of trust, and that the holders of said bonds rely solely on the property, rights, and franchises of the party of the first part covered by this mortgage, and the stipulations and covenants of the said party of the first part herein contained for the payment of the principal and interest of the bonds so held by them.

In witness whereof the said Indianapolis, Bloomington and Western Railway Company, the party of the first part, has caused these presents to be executed and signed by the president of their company and attested by their secretary in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, and the said Farmers' Loan and Trust Company have caused their corporate seal to be hereto affixed, and the same to be attested by the sig-
119 natures of their president and secretary to evidence their acceptance of the trust hereby created the day and year first above written.

[SEAL.] THE INDIANAPOLIS, BLOOMINGTON & WESTERN RAILWAY COMPANY,
By C. R. GRIGGS,
President.

Attest:
A. P. LEWIS, *Secretary.*

[SEAL.] R. G. RALSTON,
Pres't Farmers' Loan and Trust Co.

GEO. P. FITCH,
Secretary F. L. & T. Co.

(The bonds herein mentioned will be duly stamped when issued with proper and sufficient U. S. revenue stamps.)

STATE OF ILLINOIS,
Champaign County, city of Urbana, ss:

Be it remembered that on this 12th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, in the city and county aforesaid, before me, the undersigned, a clerk of the circuit court in and for said county, personally appeared C. R. Griggs, to me known to be the president of the Indianapolis, Bloomington and Western Railway Company, and who is personally known to be the person whose name is subscribed to the foregoing instrument as having exe-
120 cuted the same as such president, and the said C. R. Griggs, being by me duly sworn, did depose and say that he resides in said city of Urbana; that he was the president of the Indianapolis, Bloomington and Western Railway Company; that the seal affixed to the foregoing instrument was the corporate seal of the said Indianapolis, Bloomington and Western Railway Company, and was so affixed by authority and order of the board of directors of said company, and that he signed his name thereto by like authority and order as president of said company, and the said C. R. Griggs acknowledged to me that he had executed the said instrument, and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Indianapolis, Bloomington and Western Railway Company, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my official seal as such clerk as aforesaid, at the city of Urbana, in the county of Champaign, and State of Illinois, this 12th day of October, in the year 1869.

[SEAL.] E. T. WHITCOMB,
Clerk Circuit Court.

121 STATE OF NEW YORK,
City and County of New York:

Be it remembered that on this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, in the aforesaid city and county of New York, before me, Frederick N. Dodge, a commissioner residing in said city, duly appointed a commissioner by the governor of the State of Illinois to take the acknowledgment and proof of the execution of deeds and other instruments in writing, under seal, to be used and recorded in said State of Illinois, personally appeared R. G. Ralston, president of the Farmers' Loan and Trust Company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as having executed the same as such president; and the said R. G. Ralston, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the president of the said Farmers' Loan and Trust Company; that the seal affixed to the foregoing instrument was the corporate seal of the Farmers' Loan and Trust Company, and was so affixed by authority and order of the board of directors of said company, and that he signed his name thereto by like authority and order as president of
122 said company; and the said R. G. Ralston acknowledged to me that he had executed the said instrument and signed and sealed the same as the free and voluntary act and deed of the said Farmers' Loan and Trust Company, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my

official seal as commissioner of the said State of Illinois, at my office in the city of New York, this twentieth day of October, A. D. 1869.

[SEAL.] FREDERICK N. DODGE,
Commissioner of the State of Illinois in and for the City and County of New York.

UNITED STATES OF AMERICA, STATE OF ILLINOIS,
Office of Secretary of State, ss:

I, Edward Rummel, secretary of state of Illinois, hereby certify that Frederick N. Dodge, before whom the acknowledgment of the foregoing instrument was made, is now, and was at the time of taking thereof, a commissioner of this State in and for the city of New York, in the State of New York, duly authorized and empowered by law to take the same; that I have compared the signatures to the same,
123 and the impression of the seal thereto attached, with the official signature and seal of the said commissioner on file in this office, and verily believe them to be the genuine official seal and signature of the said commissioner.

In witness whereof I hereunto set my hand and affix the great seal of State, at the city of Springfield, this 22nd day of October, A. D. 1869.

[SEAL.] EDWARD RUMMEL,
Secretary of State.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, in the aforesaid city and county of New York, before me, Frederick N. Dodge, a commissioner residing in said city, duly appointed a commissioner by the governor of the State of Indiana to take the acknowledgment and proof of the execution of deeds and other instruments in writing under seal, to be used and recorded in said State of Indiana, personally appeared R. G. Ralston, president of the Farmers' Loan and Trust Company, who is personally known to me to be the person whose
124 name is subscribed to the foregoing instrument as having executed the same as such president; and the said R. G. Ralston, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the president of the Farmers' Loan and Trust Company; that the seal affixed to the foregoing instrument was the corporate seal of the said Farmers' Loan and Trust Company, and was so affixed by authority and order of the board of directors of said company; and that he signed his name hereto by like authority and order as president of said company; and the said R. G. Ralston acknowledged to me that he had executed the said instrument and signed and sealed the same as the free and voluntary act and deed of the said Farmers' Loan and Trust Company, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my official seal as a commissioner of the said State of Indiana, at my office in the said city of New York, this twentieth day of October, A. D. 1869.

[SEAL.] FREDERICK N. DODGE,
Commissioner for the State of Indiana in the City and County of New York.

125 STATE OF INDIANA,
Office of Secretary of State, ss:

I, M. F. A. Hoffman, secretary of state for the State of Indiana, do

hereby certify that Frederick N. Dodge, whose signature appears to the certificate of attestation last aforesaid, was at the time of so signing the same, to wit, the twentieth day of October, A. D. 1869, a commissioner of deeds for the State of Indiana in the State of New York, duly commissioned and qualified; that I believe his signature to be genuine; that his said attestation is in due form of law, and that full faith and credit are due to the same.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 23rd day of October, A. D. 1869.

[SEAL.]

M. F. A. HOFFMAN,
Secretary of State.

126 *Exhibit D to bill.*

This indenture, made and entered into this first (1st) day of October, A. D. one thousand eight hundred and seventy, by and between the Indianapolis, Bloomington & Western Railway Company, a corporation existing under and by virtue of the laws of the State of Indiana and Illinois, party of the first part, and William Dennison and Benjamin E. Smith, of the city of Columbus, State of Ohio, as trustees, of the second part:

Whereas at a meeting of the board of directors of the said Indianapolis, Bloomington & Western Railway Company, party of the first part, held pursuant to law on the fourteenth day of September, A. D. one thousand eight hundred and seventy, it was deemed expedient, for the purpose of further equiping and operating the railway of said party of the first part, and for the further purpose of meeting the liabilities of the said party of the first part of various kinds and descriptions, then due and speedingly maturing; therefore for that purpose the said board of directors resolved and passed the following resolution, to wit:

Resolved, That the president be authorized, and he is hereby empowered, to cause to be issued and secured in the usual manner of issuing and securing such bonds, one million five hundred thousand dollars ($1,500,000) second mortgage bonds of the Indianapolis, Bloom-
127 ington and Western Railway Company, said bonds to be payable, principal & interest, in the city of New York twenty years from date of issue, to bear interest at the rate of eight per cent., payable semi-annually on the first day of January and the first day of July of each and every year, provided that the first payment of interest thereon shall be due on the first day of July, A. D. one thousand eight hundred and seventy-one (1871), and not before, and the bonds to bear date October first, A. D. one thousand eight hundred and seventy (1870).

And whereas the said Indianapolis, Bloomington and Western Railway Company, party of the first part, hath in accordance with said resolution made and executed bonds to the amount of one million five hundred thousand dollars ($1,500,000) of the character and designation prescribed by said resolution, and hold the same to be issued and used for purposes and manner herein described:

Now, therefore, in further pursuance of said resolution, and to the end and purpose of securing the payment of the said one million five hundred thousand dollars ($1,500,000) of bonds and every
128 part thereof, this indenture witnesseth:

That the said Indianapolis, Bloomington & Western Railway Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar ($1.00) to

them in hand paid by said trustees, parties of the second part as aforesaid, doth hereby grant, bargain, sell, and convey to the said William Dennison and the said Benjamin E. Smith, of the city of Columbus, State of Ohio, trustees as aforesaid, parties of the second part, and to their successors and assigns, all and singular the entire railway of the party of the first part, lying, being, and extending from its terminus in the city of Indianapolis, State of Indiana, through Crawfordsville in said last-mentioned State, westward to the State of Illinois and through Danville, Urbana, and Bloomington, in said State of Illinois, further westward to Pekin, altogether being in length of railway track about two hundred and fourteen miles, about eighty-three miles thereof being in the State of Indiana, and about one hundred and thirty-one miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, &
129 chattels, used in or connection with the operation of said railway, including all rents, reservations, and reversions of every nature and kind whatever including all the property between said terminal points which the said party of the first part now has, owns, and possesses, or may hereafter acquire, to have and to hold the said railway, property, premises, and rights hereby conveyed, or so intended to be, with the said party of the second part and their successors and assigns for the sole use, benefit, and be half of the said trustees, their cestuis que trust, their successors and assigns forever, but upon the trusts and to the uses following, that is to say:

First. That this conveyance is for and should be by the said party of the second part, their successors, and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds issued and about to be issued as aforesaid by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds and the disposal thereof, and securing the same and the final payment thereof in their true intent and meaning, whether contained in said bonds or the interest warrants attached to them or in this deed.

130 Second. That for the better assuring and confirming the title and powers of the said party of the second part, their successors, and assigns in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing or to be acquired by said party of the first part appurtenant to said railway, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors, and assigns will and shall, as often as may be lawfully required by the party of the second part or their successors or assigns holding the above-granted trust, do such acts and make such other and further conveyances and assurances in law as such party of the second part shall by counsel learned in the law be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

Third. That if the said party of the first part, their successors, or assigns shall well and truly pay to the owners or holders of said one million five hundred thousand dollars ($1,500,000) of bonds, so to be issued and hereby secured, the respective sums of money and interest due and accruing on said bonds on the days and times therein
131 mentioned, and according to the tenor and effect of said bonds, then and thenceforth this indenture and all the estate hereby granted shall become and be utterly void and of no further effect, and the same shall be by such payment wholly annulled and satisfied without any further receipts or entry of sa isfaction if record whatever,

but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or their successors.

Fourth. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the 1st part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said railway, property, and franchises, and appurtenances, and to renew, replace, and repair the same and every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

132 Fifth. In case default shall be made in the payment of any interest of the aforesaid bonds, issued or to be issued, according to the tenor of the coupons thereto annexed or of the provisions hereof, or in case default shall be made in the payment of the principal of the said bonds, or any part of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part covenants and agrees to and with the party of the second part and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to them, or to their agent, the actual possession of the herein granted and demised railway and premises, together with all the books, records, papers, and accounts, and money of said company, and all management and control thereof; and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the incomes and profits thereof, and if said property
133 shall, after such taking possession thereof, be sold, then from the sale thereof; or such expenses may be paid from the sale of any personal property as the said trustees may deem proper, and that said party of the second part, and their successors, having taken such possession, may manage, operate, and control said road and property, and all of its affairs, and appoint all needful agents and employees for that purpose and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in default, according to the interest and tenor of the said bonds and the coupons annexed, and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same, first paying all expenses of such possession and management and all taxes, assessments, charges, and prior liens on said property, and a just compensation for their own services as such trustees. But in any and all cases of such taking of possession by said party of the second part, and paying up any such default and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money, and accounts into the possession of the party of the first part; provided
134 that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least the one-half of all the said issue of bonds which shall then be unpaid and outstanding, to make such demand and to take such possession of said road and property.

Sixth. That in case default shall be made as aforesaid, and shall

continue as aforesaid, it shall be lawful for the party of the second part, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of to the highest bidder all and singular the premises hereby conveyed, or intended so to be, as an entirety, at public auction, in the city of Chicago, Illinois, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default, and also first having
135 given sixty days' notice of such time and place of sale and a full description of the property so to be sold by advertisement thereof in three newspapers, one published in the State of Illinois, one published in the State of Indiana, and one published in the city of New York, and to adjourn said sale from time to time in their discretion; and if adjourned to make such sale in manner aforesaid without further notice, at the time and place to which it may be so adjourned, and upon such sale and receiving the purchase money therefor to convey the same by good and sufficient conveyance to the purchaser or purchasers, and such sale and conveyance so made shall convey all the right, including equity of redemption, title, interest, estate, and property of the said party of the first part of and in and to the said road, premises, franchises, and property to the said purchaser in fee simple forever, and shall be a perpetual bar, both in law and equity, against the said party of the
136 first part, and against their successors and assigns, and against all and every person claiming or to claim the said premises, or any part thereof, under them forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances and liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railway and property, and in managing its business and affairs while in possession, and all payment of taxes, charges, assessments, and liens prior to the lien of these presents on said premises, or any part thereof, as well as reasonable compensation for their services, to apply the proceeds of such sale to the payment of the interest of said one million five hundred thousand dollars of bonds, or as many of them as shall have been issued by said part' of the first part and be then outstanding, pro rata until all such interest shall be made,
137 and afterward to apply the remainder of the payment of the principal of said bonds pro rata until such principal shall be paid, and if any surplus be after paying all of said matters, to pay such surplus of the party of the first part, and such payment shall be so made on said bonds whether the same shall have become due or not at the time of such sale; provided that said trustee or trustees may, in their discretion, sell the said premises as an entirety, subject to any or all mortgage liens on the same, or any part thereof, which may at the time have priority over the lien of these presents, and on doing so shall make legal distribution of the proceeds of such sale.

Accordingly it is hereby declared that the receipt of said trustee or trustees, making any such sale, of the purchaser of the premises for the purchase money shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after pay-
138 ment of said purchase money, and obtaining said receipt thereof be liable, or in any way bound to see said purchase money applied to this trust, or otherwise, or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

Seventh. Any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, said trustee, or trustees, may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of the holders of said bonds, secured by this deed, then outstanding, at a reasonable price, if only a part be sold; but if the whole property be sold at a price not exceeding the whole amount of said bonds and interest then outstanding.

Eighth. If default be made by the party of the first part in the payment of any of half year's interest or any of said bonds, and the
139 warrants or coupons for such interest shall have been presented and its payment demanded, and such default shall have continued six (6) months after such demand without the consent of the holder of such coupon or bond, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said party of the second part may so declare the same and notify the party of the first part thereof, and upon the written request of the holders of a majority of the said bonds then outstanding shall proceed to collect both principal and interest of all such bonds outstanding by foreclosure and sale of said property, or otherwise, as herein provided.

Ninth. It is hereby mutually agreed by the parties hereto that the trustees shall be responsible only for gross negligence and will-
140 ful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satisfactorily indemnified against the same by one or more of said bondholders.

In case of the resignation or inability to act of the trustees aforesaid, or either of them, the board of directors may appoint a successor or successors, and failing so to appoint, any court of competent jurisdiction in either of the said States may appoint a trustee or trustees to fill such vacancy or vacancies on the application of the holders of one-fifth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee or trustees so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

It is understood and agreed by and between the parties hereto
141 that no individual liability shall attach to any stockholder of the party of the first part in behalf of the holder of any of the bonds secured by this mortgage or deed of trust, anything in the constitution or laws of either of said States to the contrary notwithstanding, and that the holder of said bonds may solely rely on the property, rights, and franchises of the party of the first part, covered by this mortgage, and the stipulations and covenants of the said party of the first part herein contained, for the payment of the principal and interest of the bonds so held by them.

In witness whereof the said Indianapolis, Bloomington and Western Railway Company has caused these presents to be executed and signed by the president of their company, and attested by their secretary in their behalf, and for the said company has caused the corporate seal of the company to be hereto affixed, and the said William Dennison and Benjamin E. Smith, trustees, as aforesaid, have hereto affixed

their hands and seals to evidence their acceptance of the trust
142 hereby created the day and year first above written.

INDIANAPOLIS, BLOOMINGTON & WESTERN
RAILWAY COMPANY,
[SEAL.] C. R. GRIGGS,
President.
Attest: A. P. LEWIS,
Secretary.
W. DENNISON, [SEAL.]
B. E. SMITH, [SEAL.]
Trustees.

[The legal U. S. rev. stamp affixed to the bonds.]

STATE OF ILLINOIS,
Champaign County, City of Urbana:

Be it remembered that on this tenth day of October, in the year of our Lord one thousand eight hundred and seventy, in the city and county aforesaid, before me, the undersigned, a clerk of the circuit court in and for said county, personally appeared C. R. Griggs, to me known to be the president of the Indianapolis, Bloomington & Western Railway Company, and who is personally known to me to be the person whose name is subscribed to the foregoing instrument as having executed the same as such president, and the said C. R. Griggs, being by me
143 duly sworn, did depose and say that he resides in the said city of Urbana; that he was president of the Indianapolis, Bloomington and Western Railway Company; that the seal affixed to the foregoing instrument was the corporate seal of the said Indianapolis, Bloomington & Western Railway Company, and was so affixed by authority and order of the board of directors of said company, and that he signed his name thereto by like authority and order as president of said company, and the said C. R. Griggs acknowledged to me that he had executed the said instrument, and signed, sealed, and delivered the same, as the free and voluntary act and deed of said Indianapolis, Bloomington and Western Railway Company for the use and purposes therein expressed.

In testimony whereof I set my hand and affix my official seal as such clerk as aforesaid, at the city of Urbana, county of *of* Champaign and State of Illinois, this 10th day of October, in the year one thousand eight hundred and seventy (1870).

[SEAL.] E. T. WHITCOMB, *Clerk.*

144 STATE OF OHIO,
Franklin County, ss:

Before me, the undersigned, a notary public of the State of Ohio, duly commissioned and qualified, personally came the above-named William Dennison and Benjamin E. Smith, trustees, and the party of the second part in foregoing mortgage and deed of trust, and both personally known to me as the persons who signed the same as such, and each acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 11th day of October, anno Domini 1870.

[SEAL.] AUGUSTUS BRADLEY,
Notary Public.

UNITED STATES OF AMERICA, OHIO,
Office of the Secretary of State:

I, Isaac R. Sherwood, secretary of state of the State of Ohio, do hereby certify that Augustus Bradley, whose attestation is
145 attached to the foregoing instrument, was at the date of such attestation an acting notary public of the State of Ohio, within and for the county of Franklin; that he is the proper officer to take such attestation, and that his official acts are entitled to full faith and credit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this office, at Columbus, the 11th day *day* of October, in the year of our Lord one thousand eight hundred and seventy, and the ninety-fifth year of the Independance of the United States of America.

[SEAL.] ISAAC R. SHERWOOD,
Secretary of State.

STATE OF INDIANA, MARION COUNTY,
Recorder's Office, sct.:

I, Calvin T. Daniel, recorder in and for said county, do hereby certify that the above and foregoing is a true, full, and complete copy of the trust deed or mortgage executed by Indianapolis, Bloomington & Western R. W'y Co. to Wm. Dennison et al., trustees, as appears
146 of record in my office, in mortgage record No. 13, page 166, and filed for record Oct. 17th, 1870.

In testimony whereof I hereunto set my hand and official seal, at Indianapolis, this 4th day of April, 1877.

[SEAL.] CALVIN F. DARNELL,
Recorder of Marion Co., Indiana.

STATE OF INDIANA,
Hendricks County, ss:

Leroy Rawlings, recorder in and for said county, would hereby certify that the above and foregoing is a true, full, and complete copy of a deed of trust between the parties herein named as the same appears of record in my office, in mortgage record number six, on pages 71 & 81, inclusive.

Witness my hand and official seal this 3d day of April, 1877.

[SEAL.] LEROY RAWLINGS,
R. H: Co.

The above-named instrument was filed for record in this office on the 17 day of Oct., 1870.

L. RAWLINGS.

STATE OF INDIANA,
Boone County, ss:

147 I, William F. Morgan, recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office on the 18th day of Oct., 1870, and which was recorded in book 4 of mortgage records of said county, on pages 429 to 438, as appears of record in my said office.

In witness whereof I hereunto subscribe my name and affix the official of said office, this 4th day of April, 1877.

[SEAL.] WILLIAM F. MORGAN,
Recorder Boone County, Ind.

STATE OF INDIANA,
Montgomery County, ss:

I, T. N. Myers, recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office on the 15th day of October, 1870, and which was recorded in book 8 of mortgage records of said county, on page 387 to 393, as appears of record in my said office.

In witness whereof I hereunto subscribed my name and affix
148 the official seal of said office this 5th day of April, A. D. 1877.

[SEAL.] T. N. MYERS,
R. M. Co.

STATE OF INDIANA,
Fountain County, ss:

I, William Yourt, recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office, on the 28th day of Oct., 1870, and which was recorded in book 6 of mortgage records, at pages 24 to 31, as appears of record in my said office.

In witness whereof I hereunto subscribe my name and affix the seal of said office at Covington, this 5th day of April, A. D. 1877.

[SEAL.] WM. YOURT, *R. F. Co.*

STATE OF ILLINOIS,
Vermillion County, ss:

I, George Dillon, clerk of the circuit court in and for said county and State, and ex officio recorder, do hereby certify that the foregoing is a full & true transcript of the record of a certain trust deed
149 or mortgage which was filed for record in said office on the 26th day of October, 1870, and which was recorded in book 11 of mortgage records of said county, on pages 418 to 425, as appears of record in my said office.

In witness whereof I have hereunto subscribed my name and affixed the official seal of said court this 17th day of March, A. D. 1876.

[SEAL.] GEORGE DILLON,
By L. M. BROWN, *Dep.*

STATE OF ILLINOIS,
Champaigne Co., ss:

I, J. W. Porter, clerk of the circuit court and ex officio recorder in and for said county in the State aforesaid, do hereby certify that the foregoing is a true, full, and complete copy of a trust deed or mortgage executed by the Indianapolis, Bloomington and Western Railway Company to William Dennison et al., trustees, &c., as appears of record in my office in mortgage record "W," on page 451 to 458, both inclusive, and filed for record October 25th, 1877.

[SEAL.] J. W. PORTER,
Circuit Clerk & ex officio Recorder of Champaign County, Ill.

150 STATE OF ILLINOIS,
Piatt County, ss:

I, William H. Plunk, clerk of the circuit court & ex officio recorder in and for said county, do hereby certify that the foregoing is a full and

true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office on the 21st day of October, 1870, and which was recorded in book V of deed records of said county, on pages 60, 61, 62, 63, 64, 65, 66, & 67, appears of record in my said office.

In witness whereof I have hereunto set my hand & official seal this 22d day of March, 1877.

[SEAL.] WM. H. PLUNK,
Clk Cir. Ct. & ex off. Recorder.

STATE OF ILLINOIS,
De Witt Co., ss:

I, Wm. H. Harrison, clerk of the circuit court and ex officio recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office on the 20th day of
151 October, A. D., 1870, & which was duly recorded in book 7 of mortgages, page 154, as appears of record in said office.

In witness whereof I have hereunto set my hand and official seal this 22d day of March, A. D. 1877.

[SEAL,] WM. H. HARRISON,
Clerk & ex officio Recorder.

STATE OF ILLINOIS,
McLean County, ss:

I, J. C. McFarland, clerk of the circuit court and ex officio recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the record of a certain trust deed or mortgage which was filed for record in my said office on the 20th day of October, 1870, and which was recorded in book 35 of mortg's records of said county, on pages 61–67, as appears of record in my said office.

In witness whereof I hereunto subscribe my name and affix the official seal of said court this 23d day of March, A. D. 1877.

[SEAL.] J. C. McFARLAND,
Clerk Circuit Court & ex officio Recorder.

152 STATE OF ILLINOIS,
Tazewell County, ss:

I, H. H. Sutton, clerk of the circuit court and ex officio recorder in and for said county, do hereby certify that the foregoing is a full and true transcript of the records of a certain trust deed or mortgage which was filed for record in my said office on the 22d day of October, 1870, and which was recorded in book N of mortgage record of said county, on page 494 to 501, as appears of record in my said office.

In witness whereof I hereunto subscribed my name & affix the official seal of said court this 23d day of March, A. D. 1877.

[SEAL.] H. H. SUTTON,
Circuit Clerk & ex off. Recorder.

153 *Exhibit E to bill.*

Deed. The Havana, Mason City, Lincoln & Eastern Railway Company to the Indianapolis, Bloomington and Western Railway Company.

This indenture, made and entered into this 28th day of June, A. D. 1872, by and between the Havana, Mason City, Lincoln and Eastern Railway Company, a corporation created by and existing under the laws of the State of Illinois, (the same having been formed by a consolidation of the Havana, Mason City, Lincoln, and Eastern Railway Company with the Monticello Railroad Company, corporations created by the laws of Illinois) of the first part, and the Indianapolis, Bloomington and Western Railway Company, a corporation created by and existing under the laws of the State of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants, agreements, and undertakings to be performed by the said party of the second part as hereinafter set forth, has this day granted, bargained, sold, and conveyed, and by these presents does grant,
154 bargain, sell, and convey, unto the said party of the second part, all and singular the railroad, lands, rights of way, stations, station grounds, lands, lots, bridges, furniture, tools, machinery, fuel, timber, iron, stone, materials, road-bed, belonging to the said party of the first part, and its goods and chattels, and all and singular its lands, bills, notes, accounts, demands, subscriptions, moneys, and things in action, and all and singular its estates, property, effects, real and personal, movable and immovable, at law and in equity, whereever situated, and all and singular its franchises, privileges, immunities, credits, and corporate rights, and all and singular the rights, franchises, railroads, road-beds, rights of way, lands, and all property, real and personal, and all choses in action, of every kind and nature, including all donations and subscriptions which were the property of the said Monticello Railroad Company, and of the Havana, Mason City, Lincoln & Eastern Railway Company, respectively, to have and to hold forever.

And the said party of the first part hereby declares that all the property mentioned herein, of every kind and description, is vested in and held, owned, and possessed by the said Indianapolis, Bloomington
155 and Western Railway Company, the said party of the second part, its successors and assigns forever, to its own use, benefit, and behoof, to all intents and purposes, which said property for greater certainty is described as follows, to wit:

The railroad, track, grounds, buildings, and property, the road-bed, sidings, switches, stations, depots, rights of way, and all rights, credits, subscriptions, and corporate franchises, which were of the Monticello Railroad Company before and at the time of the consolidation with the said Havana, Mason City, Lincoln and Eastern Railway Company, said Monticello Railroad commencing at the the city of Decatur, in the county of Mason, in the State of Illinois, running thence to the town of Monticello, in the county of Piatt, thence to the city of Champaign, in the county of Champaign, thence through the county of Vermillion to a junction with the Chicago, Danville and Vincennes Railroad, in the county of Iroquois, a distance of about eighty-five miles, all in the State of Illinois.

Also the railroad, railroad lands, rights of way, grounds, buildings, and all rights, credits, subscriptions and corporate franchises which were of the Havana, Mason City, Lincoln and Eastern Railway Company, before and at the time of its consolidation with the said Mon-
156 ticello Railroad Company, said Havana, Mason City, Lincoln and Eastern Railway commencing at some point on the Mississippi River, thence running eastwardly to Havana, Mason County, Illinois

thence to Mason City, in said Mason County, thence to Lincoln, in Logan County, Illinois, thence to Clinton, in De Witt County, Illinois, thence eastwardly to the east line of the State of Illinois, the said road having been located from said Havana to said Mason City, from thence to said Lincoln, from thence to said Clinton, and from thence to said White Heath, in the county of Piatt, and thence to the city of Champaign, State of Illinois.

And said party of the second part further covenants and agrees that it will, within two years from the date of these presents, construct, furnish, & equip the said railroad hereby conveyed by the party of the first part *part* from White Heath, in Piatt County, to Havana, on the Illinois River, by way of Clinton, in DeWitt County, Lincoln, in Logan County, and Mason City, in Mason County; and it is further mutually agreed between the parties hereto that if the said party of the second part shall fail to construct, finish, and equip said road, as mentioned,
157 within two years from the date of these presents, then, and in that event, all the property and corporate rights herein sold, granted, and conveyed to the said party of the second part shall revert to and again become the property and franchises of the said party of the first part to all intents and purposes.

And the said party of the first part does hereby grant, bargain, sell, and convey all of the foregoing-described property, real and personal, of all of its corporate rights, and all its credits, privileges, and immunities of every kind, sort, nature, and description to the said Indianapolis, Bloomington and Western Railway Company, party of the second part, to have and to hold the said property and premises, corporate rights, and privileges which were of the said Havana, Mason City, Lincoln and Eastern Railway Company, and which were of the said Monticello Railroad Company before and at the time of the formation and creation of the said party of the first part by the consolidation of the said Havana, Mason City, Lincoln and Eastern Railway Company and *and* the said Monticello Railroad Company, and which now are the property, premises, corporate rights, and privileges of the said party of the first part, unto the said party of the second part, its assigns, and successors forever.

In consideration of which the said party of the second part
158 hereby covenants and agrees to and with the said party of the first part that all the present stockholders of the said party of the first part shall be stockholders of the said Indianapolis, Bloomington and Western Railway Company party of the second part, in the like amount and with the like liabilities and rights between them severally and the said party of the second part as now exists between them severally and the said party of the first part.

And the said party of the first part hereby authorizes, empowers, and directs all townships, counties, and cities that have voted any bonds in aid either of the said Monticello Railroad Company or in aid of the said Havana, Mason City, Lincoln and Eastern Railway Company to deliver the same to the party of the second part upon the same terms and conditions that the same were voted to the said Monticello Railroad Company and the said Havana, Mason City, Lincoln and Eastern Railway Company, respectively.

It is understood between the parties hereto that all the legal and valid contracts, bonds, certificates, deeds, and other acts and writings of the said party of the first part hereto a*nd* hereby transferred to and shall continue in full force and effect as the proper contracts, bonds,

certificates, deeds, acts, and writings of the said party of the second part, to all intents and purposes.

159 In witness whereof the party of the first part hath caused its corporate seal, with the signature of its president and secretary, to be hereunto affixed, on this the twenty-eight' day of June, in the year of our Lord one thousand eight hundred and seventy-two.

HAVANA, MASON CITY, LINCOLN & EASTERN RAILWAY CO.,
[SEAL OF COMPANY.] By THOMAS SNELL, *President.*

Attest:
LEWIS J. BOND,
Secretary of the Havana, Mason City, Lincoln and Eastern Railroad Company.

STATE OF ILLINOIS,
Champaign County, ss:

On this 28th day of June, A. D. 1872, before the subscriber, a clerk of the circuit court in and for the city and county of Champaign, in the State of Illinois, personally appeared Thomas Snell, president of the Havanna, Mason City, Lincoln, and Eastern Railway Company, and to me well known to be such president of the party of the first part in the foregoing indenture, and to me well known to be the person whose signature is affixed to the foregoing indenture, and that the said Thomas Snell, being by me duly sworn, maketh oath and saith that he is the president of the Havana, Mason City, Lincoln and Eastern Railway Company, and by resolution of its board of directors was duly
160 authorized to and did affix to the foregoing deed its common seal, and that the foregoing seal is its common seal, and he acknowledged that as such president he executed the same on behalf of said company for the uses and purposes therein specified. And on the same day personally appeared before me, the subscriber, Lewis J. Bond, secretary of the said Havana, Mason City, Lincoln and Eastern Railway, and to me well known to be such secretary, and the real person who signed the foregoing indenture, and the said Lewis J. Bond, being by me duly sworn, maketh oath and saith he is the secretary of the Havana, Mason City, Lincoln and Eastern Railway Company, and that he was by its board of directors duly authorized to sign the foregoing indenture for the uses and purposes therein specified, and that he did so sign and execute the same.

[CIRCUIT COURT SEAL.] E. T. WHITCOMB,
Clerk Circuit Court.

161 *Exhibit T to bill.*

Extension mortgage bond of the Indianapolis, Bloomington & Western Railway Company.

This indenture, made this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and seventy-two, between the Indianapolis, Bloomington and Western Railway Company, a corporation of the States of Indiana and Illinois, the party of the first part, and William Dennison, of the city of Columbus, State of Ohio, and Robert Turner, of the city of New York, as trustees, of the second part.

Whereas the Havana, Mason City, Lincoln and Eastern Railway Company and the Monticello Railroad Company, both corporations of the

State of Illinois, consolidated their property, stock, and franchises, under the laws of Illinois, in due form of law, and gave to the consolidated company the name of the Havana, Mason City, Lincoln and Eastern Railway Company, and did so consolidate in the lawful exercise of their corporate powers under their charters, and under the laws of the State of Illinois, and did by such consolidation become one single corporation under the name aforesaid.

And whereas the said Havana, Mason City, Lincoln and East-
162 ern Railway Company by such consolidation became possessed of all the property and franchises which were of the said Monticello Railroad Company and the Havana, Mason City, Lincoln and Eastern Railroad Company before and at the time of said consolidation, which said property is described as follows: The railroad, track, lands, grounds, buildings, and property, the road-bed, sidings, switches, stations, depots, rights of way, and all rights, credits, and subscriptions which were of the said Monticello Railroad Company before and at the time of said consolidation, said Monticello Railroad commencing at the city of Decatur, in the county of Macon, in the State of Illinois, running thence to the town of Monticello, in the county of Piatt; thence to the city of Champaign, in the county of Champaign; thence through the county of Vermillion to a junction with the Chicago, Danville and Vincennes Railroad, in the county of Iroquois, a distance of about eighty-five miles, all in the State of Illinois, and the railroad, tracks, lands, grounds, buildings, and property, the road-bed, sidings, stations, switches, depots, rights of way, and all rights, credits, subscriptions, and franchises which were of the said Havana, Mason City, Lincoln and Eastern Railroad Company before and at the time of the
163 said consolidation, said Havana, Mason City, Lincoln and Eastern Railway commencing at some point on the Mississippi River; thence running eastwardly to Havana, Mason County, Illinois; thence to Mason City, in said Mason County; thence to the city of Lincoln, in Logan County, Illinois; thence to Clinton, in De Witt County, Illinois; thence eastwardly to the east line of the State of Illinois.

And whereas at a meeting of the board of directors of the Indianapolis, Bloomington and Western Railway Company, party of the first part, herein held pursuant to law on the 28th day of June, in the year of our Lord one thousand eight hundred and seventy-two, it was recognized and deemed as expedient for the Indianapolis, Bloomington and Western Railway Company to purchase of the Havana, Mason City, Lincoln and Eastern Railway Company, the same being the said consolidated company, all the said property mentioned, together with the franchises of the said last-mentioned railway company, and thereupon the said board passed a resolution unanimously authorizing the purchase of the property and franchises of said Havana, Mason City, Lincoln and Eastern Railway Company.

And whereas the stockholders of the said Havana, Mason City,
164 Lincoln and Eastern Railway Company, the same being the said consolidated company, did, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and seventy-two, in due and legal form, authorize the sale of all the property and franchises of the said Havana, Mason City, Lincoln, and Eastern Railway Company to the said Indianapolis, Bloomington and Western Railway Company, and did authorize and direct and empower the board of directors of said railway company to make, execute, and deliver to the said Indianapolis, Bloomington and Western Railway Company a good and sufficient deed of conveyance to all of the said property and franchises

to the said Indianapolis, Bloomington and Western Railway Company in due form of law.

And whereas the board of directors of the said Havana, Mason City, Lincoln and Eastern Railway Company did, by resolution duly passed, authorize the said sale of the property and franchises of the Havanna, Mason City, Lincoln and Eastern Railway Company, and authorized and directed that a deed of conveyance be prepared and executed by the president and secretary of said railway company in due form of law conveying the said road, its property, franchises, appurtenances,
165 appendages, rights, and credits to the said Indianapolis, Bloomington and Western *and Western* Railway Company, in consideration that the said Indianapolis, Bloomington and Western Railway Company would issue its stock to the holders of stock in the said Havana, Mason City, Lincoln and Eastern Railway Company, share for share, and for other considerations.

And whereas the said president and secretary of the said Havana, Mason City, Lincoln and Eastern Railway Company, in pursuance of said authority, did, on the 28th day of June, in the year of our Lord one thousand eight hundred and seventy-two, make, execute, and deliver to the said party of the first part herein a good and sufficient deed of conveyance in fee simple, conveying to the said party of the first part herein all the property and franchises of the said Havana, Mason City, Lincoln and Eastern Railway Company hereinbefore described and set forth.

And whereas the board of directors of the said Indianapolis, Bloomington and Western Railway Company did, in due form of law, accept the said last-mentioned deed of conveyance upon the conditions therein expressed, and the said Havana, Mason City, Lincoln and Eastern Railway, together with all its franchises, rights, credits, subscrip-
166 tions, appurtenances, and appendages, thereby then and there became the property of and vested in the said Indianapolis, Bloomington and Western Railway Company to all intents and purposes forever.

And whereas at a meeting of the board of directors of the said Indianapolis, Bloomington and Western Railway Company, held pursuant to law on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and seventy-two, it was recognized as expedient to complete the construction of and to equip the said line of railroad so purchased from the said Havana, Mason City, Lincoln and Eastern Railway Company from the city of Champaign, in the county of Champaign, to the town of White Heath, in the county of Piatt, and from said town of White Heath, by way of Clinton, in the county of De Witt, Lincoln, in the county of Logan, Mason City, and Havana, in the county of Mason, to the Mississippi river, and from the said town of White Heath, by way of Monticello, in the county of Piatt, to the city of Decatur, in the county of Macon, all in the State of Illinois, the same being a distance of two hundred and fifteen miles.

And thereupon, and for the accomplishment of the purpose aforesaid, the said board of directors resolved and passed a preamble and resolution as follows, to wit:

That whereas in the opinion of this board it is expedient for this company to complete the construction of and equip the line of
167 road purchased from the Havana, Mason City, Lincoln and Eastern Railway Company, from Champaign, in the county of Champaign, to White Heath, in the county of Piatt, and from thence, by way of Clinton, in De Witt County, Lincoln, in Logan County, Mason

City, and Havana, in Mason County, to the Mississippi River, and from said White Heath, by way of Monticello, in the county of Piatt, to the city of Decatur, in the county of Macon, all in the State of Illinois, and for that purpose to issue the bonds of this company to the aggregate amount of five millions five hundred thousand dollars. It is therefore resolved by this board—

First. That a series of five thousand five hundred bonds of this company be prepared for issue and delivery, signed by the president and secretary, and authenticated when issued by the certificate of trustees, each for the sum of one thousand dollars, to be numbered consecutively from one to five thousand five hundred, inclusive, bearing date the first day of July, A. D. 1872, and payable to William Dennison, or bearer, in the city of New York, on the first day of July, A. D. 1912, principal and interest, payable in the gold coin of the United States of America, of equal standard of value of the present gold coin of the United States
of America, free of government tax, with interest warrants there-
168 to attached, signed by the secretary, for the payment of interest
thereon at the rate of seven per centum per annum in gold coin, as aforesaid, on the successive first days of July and January of each year, the said principal and interest payable at the office or agency of the company in the city of New York.

Second. That a deed of conveyance be prepared and executed, to be signed by the president and secretary, conveying the said line of road so to be constructed and equipped, together with its appurtenances and its appendages, its franchises, equipments, property, tools, income, and interests, which now belong to, or which may hereafter appertain to said line of road, to trustees to secure the payment of said bonds and interest warrants, and in such form and with such provisions as the president of this company may by executing approve.

Third. That a sinking fund of thirty thousand dollars annually, to provide for the payment of said bonds, shall be formed by setting apart on the first day of July, A. D. 1876, and each and every year thereafter on the first day of July, the sum of thirty thousand dollars.

This sinking fund shall be kept and invested by three com-
169 missioners, one of whom shall be the president of the company, the other two shall be members of this board, one of whom shall be changed annually.

The said commissioners shall invest the said fund in the bonds of this company, otherwise, at the discretion of said commissioners, in stocks of the United States or of the State of Illinois.

Fourth. That the commissioners shall frame rules for the safety and management of the said trust, and file the same with the treasurer, and shall annually file their report with the said treasurer, showing the condition, amount, and investment of the said sinking fund.

And whereas the said Indianapolis, Bloomington and Western Railway Company, party of the first part, hath in accordance with said preamble and resolutions, made and executed bonds to the amount of five million five hundred thousand dollars, of the numbers, form, or designation, and character prescribed by said resolutions, and hold the same to be issued and used for the purposes and manner therein described; and which said bonds are known and designated as a first mortgage seven per cent. Indianapolis, Bloomington and Western Railway Company Extension Bond.

Now, therefore, in further pursuance of said resolution, and to
170 the end and purpose of securing the payment of the said five

million five hundred thousand dollars of bonds, and every part thereof, this indenture witnesseth:

That the said Indianapolis, Bloomington and Western Railway Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to it in hand paid, by the said party of the second part, trustees as aforesaid, doth hereby grant, bargain, and sell, and convey to the said William Dennison and Robert Turner, trustees as aforesaid, and to their successors and assigns, all and singular the railway of the said party of the first part, known as the western extension of the said Indianapolis, Bloomington and Western Railway, and described as follows to wit: Commencing at the city of Champaign, in the county of Champaign, State of Illinois, thence running to the town of White Heath, in the county of Piatt; thence by way of Clinton in the county of De Witt; Lincoln, in the county of Logan; Mason City and Havana, in the county of Mason; westwardly to the Mississippi River, and from the said town of White Heath, by way of Monticello, in the county of Piatt, to the city of Decatur, in the county of Macon, all in the State of Illinois, altogether being in length about two hundred and fifteen miles,
171 together with all its franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind and nature used in or connected with the operation of said line of railway, including all rents, reservations, and reversions of every nature and kind whatsoever, including all the property between said terminal points which the said party of the first part now has, owns, or possesses, or may hereafter acquire, own, and possess.

To have and to hold the said railway herein described, and the said property, premises, and rights hereby conveyed, or so intended to be conveyed unto the said party of the second part, and their successors and assigns, for the sole use, benefit, and behoof of the said trustees, their cestuis que trust, their successors and assigns forever; but upon the trusts and to the uses following, that is to say:

First. That this conveyance is for and shall be by the said party of the second part, their successors, and assigns held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued, as aforesaid, by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds, and the disposal thereof, and securing the same, and the final payment thereof in their true intent and meaning, whether contained in said bonds, or in the in-
172 terest warrants attached to them, or in this deed.

Second. That for the better assuring and confirming the title and powers of the said party of the second part, their successors, and assigns in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing or to be acquired by the said party of the first part, appurtenant to said line of railway which is intended to pass or be passed by this conveyance, the said party of the first part, its successors, and assigns will and shall, as often as may be lawfully required by the party of the second part, or their successors or assigns, holding the above granted trusts, do such acts and make such other and further conveyances and assurances in law as such party of the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

Third. That if the said party of the first part, their successors, or as-

signs shall well and truly pay to the owners or holders of said five million five hundred thousand dollars of bonds so to be issued, and hereby secured, the respective sums of money and *and* interest due and accruing on said bonds, on the days and times therein mentioned, and
173 according to the tenor and effect of said bonds, then and thenceforth this indenture and all the estate hereby granted shall become and be utterly void, and the same shall be, by such payment, wholly annulled and satisfied without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or their successors.

Fourth. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said line of railway, property, franchises, and appurtenances mentioned, and to renew, replace, and repair the same, and every part thereof, and take and receive, and use the tolls, rents, issues, income, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

Fifth. In case default shall be made in the payment of any interest of the aforesaid bonds to be issued according to the tenor of the coupons thereto annexed, or of the provisions hereof, or in case default
174 shall be made in the payment of the principal of said bonds or any of them when the same shall become due without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the said party of the second part and their successors and assigns, that within six months after such default shall have occur'ed, the same default still continuing, the said party of the first part, on demand of the said trustees for the time being, shall and will surrender to them, or to their agent, the actual possession of the herein granted and demised railway and premises, together with all the books, records, papers, accounts, and money in the hands of the said party of the first part appertaining to and belonging properly to the said company on account of the said line of railway herein demised, and all management and control thereof, and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the income and profits thereof, and if said property shall, after such taking possession thereof, be sold, then from the sale thereof, or such expenses may be paid from the sale of any personal property appertaining to said demised premises as the said trustees may deem proper, and that said party of the second part
and their successors having taken such possession may manage,
175 operate, and control said demised road and property, and all its affairs, and appoint all needful agents and employees for that purpose, and pay the same, and receive all the incomes, issues, profits thereof and apply the same to the payment of the said interest so in default according to the true intent and tenor of said bonds and the coupons annexed and to the terms of this deed until such default shall have been satisfied if such incomes and profits will satisfy the same, first paying all expenses of such possession and management, and all taxes, assessments, charges, and liens upon said property, and a just compensation for their own services as such trustees, but in any and all cases of such taking possession by said party of the second part, and paying up any such default and the expenses aforesaid, the said party of the

second part shall immediately thereafter redeliver the said railway and demised premises, books, records, and money, and accounts into the possession of the said party of the first part; provided that no such demand for possession shall be made by said trustees until they shall have been required by the holders of at least the one-half of all the said issue of bonds which shall then be unpaid and outstanding to
176 make such demand and to take such possession of said road and property.

Sixth. That in case default shall be made as aforesaid, and continue as aforesaid, it shall be lawful for the party of the second part or their successors in said trust after entry as aforesaid, or other entry or without entry, personally or by agent or attorney, to sell and dispose of, to the highest bidder for cash, all and singular the premises and property hereby conveyed, or intended so to be, as an entirety, at public auction, in the city of Springfield, State of Illinois, at such time as said party of the second part may appoint, first having demanded of the said party of the first part full payment of all money then in default, and also first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold by advertisement thereof in three newspapers, one published in the State of Illinois, one in the city of New York, and one published in the city of Indianapolis, Indiana, and to adjourn said sale from time to time in their discretion, and if adjourned to make such sale in manner aforesaid, without further notice, at the time and place to which it may be adjourned, and upon such sale and receiving the purchase money
177 therefor to convey the same by good and sufficient deed of conveyance to the purchaser or purchasers, and such sale and conveyance so made shall convey all the right, title, interest, estate, and property of the said party of the first part of, in, and the said road and premises, franchises, and property to the said purchaser in fee simple forever, and shall be a perpetual bar both in law and equity against the said party of the first part, and against their successors and assigns, and against all and every person claiming or to claim the said premises or any part thereof under them forever. After deducting from the proceeds of such sale the expenses of the sale and conveyances, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railway and property and in managing its business and affairs while in possession, and all payment of taxes charges and assessments, as well *as well* as reasonable compensation for their services in that behalf, to apply the proceeds of such sale to the payment of the interest of said five million five hundred thousand dollars of bonds, or so many of them as shall have been issued by
178 the said party of the first part and be then outstanding, pro rata until such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds pro rata until such principal shall be paid, and if any surplus remain after paying all of said matters to pay such surplus to the party of the first part, and such payment shall be so made on said bonds, whether the same shall have become due or not at the time of such sale, provided that said trustees may, in their discretion, sell the said premises and property hereby conveyed as an entirety or any part thereof.

It is hereby declared that the receipts of said trustees making any such sale to the purchaser of the premises for the purchase money, shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after payment of said purchase money and

obtaining such receipts therefor, be liable or in any way bound to see said purchase money applied to this trust, or otherwise, or in any manner answerable for its loss or misapplication or obliged to inquire into the authority for making such sale.

179 Seventh. If default be made by the party of the first part in the payment of any half year's interest on any of said bonds, and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued for six months after such demand without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and the said party of the second part may so declare the same, and notify the party of the first part thereof, and upon the written request of the holders of a majority of the said bonds then outstanding shall proceed to collect both the principal and interest of all such bonds outstanding by foreclosure and sale of said property or otherwise, as hereinbefore provided.

Eighth. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents or by judicial authority, the said trustees or either of them may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of

180 the holders of said bonds secured by this deed then outstanding, at a reasonable price, if only a part be sold; but if the whole property be sold, then at a price not exceeding the whole amount of said bonds and interest then due and outstanding.

Ninth. It is hereby mutually agreed by the parties hereto that the trustees shall be responsible only for gross negligence and wilful default, and that they shall not be bound to any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly indemnified against the same by one or more of said bondholders.

In case of the resignation or inability to act of the trustees aforesaid the board of directors may appoint a successor or successors, and failing to so appoint, any court of competent jurisdiction in the State of Illinois may appoint a trustee or trustees to fill such vacancy, on the application of the holders of the one-sixth part of the bonds hereby intended to be secured then outstanding, and such appointment

181 by the board or by such court shall invest the trustee or trustees so appointed with all the interests, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the said party of the second part.

And the said party of the first part hereby further covenants and agrees with the party of the second part and their successors, and with the holders of each and all of the said issue of five million five hundred thousand dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the redemption of said bonds and each of them by setting aside and depositing with three commissioners, to be appointed by the said party of the first part for that purpose, from and after the first day of July, A. D. 1876, and annually thereafter until the maturity of said bonds, the sum of thirty thousand dollars.

Such sinking fund moneys shall be invested in the purchase of the bonds so issued, or in the bonds of the Government of the United States or of the State of Illinois, and the money accruing on any and all such investments for interest, as fast as the same shall be received, shall be

182 added and paid unto said sinking fund, and compounded therein continually, and reinvested in like manner with the other money of said fund.

That the board of directors of said party of the first part shall have entire control of the management of said sinking fund and of every person in charge of or connected with the same, and shall from time to time direct in what bonds or securities it shall be invested, and at what price or rates, and how it shall be kept, and the manner of keeping the accounts thereof, and shall require ample security to be given them by any person in charge of its moneys, or its securities, or bonds, for safe-keeping.

Every bond of the issue of five million five hundred thousand dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been redeemed by said party of the first part, and the interest on such bonds held by said sinking fund shall be paid by said party of the first part regularly as the interest on its other similar bonds is paid.

It is understood and agreed by and between the parties hereto
183 that no individual liability shall attach to any stockholder of the party of the first part in behalf of the holders of any of the bonds secured by this mortgage or deed of trust, and that the holders of said bonds rely solely on the property, rights, and franchises of the party of the first part covered by this mortgage or deed of trust and the stipulation and covenants of the said party of the first part herein contained for the payment of the principal and interest of the bonds so held by them.

In witness whereof the said Indianapolis, Bloomington and Western Railway Company, the party of the first part, has caused these presents to be executed and signed by the president of said company, and attested by the secretary in its behalf and for the said company, and has caused the corporate seal of said company to be affixed, and the said William Dennison and Robert Turner have signed and sealed the same to evidence their acceptance of the trust hereby created the day and year first above written.

INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILROAD COMPANY,

[COMPANY.] By BENJAMIN E. SMITH, *President.*

184 Attest:

ALBERT P. LEWIS, *Secretary.*
WILLIAM DENNISON, *Trustee.* [SEAL.]
ROBERT TURNER, *Trustee.* [SEAL.]

Executed in presence of—
J. C. SHORT.
C. W. SMITH.

(The bonds herein mentioned will be duly stamped when issued with proper and sufficient U. S. revenue stamps.)

STATE OF ILLINOIS,
Champaign County, ss:

Be it remembered that on the 28th day of June, A. D. 1872, at the county aforesaid, before me, the undersigned, clerk of the circuit court in and for said county, personally appeared Benjamin E. Smith, to me known to be the president of the Indianapolis, Bloomington and Western Railway Company, and who is personally known to me to be the

real person whose name is subscribed to the foregoing instrument as having executed the same as such president, and the said Benjamin E. Smith, being by me duly sworn, did depose and say that he is and
185 was the president of the Indianapolis, Bloomington and Western Railway Company; that the seal affixed to the foregoing instrument was and is the corporate seal of the said Indianapolis, Bloomington and Western Railway Company, and was so affixed by authority and order of the board of directors of said company, and that he signed his name thereto by like authority and order as president of said company, and the said Benjamin E. Smith acknowledged to me that he had executed the said instrument and signed and sealed and delivered the same as the free and voluntary act of the Indianapolis, Bloomington and Western Railway Company for the uses and purposes therein expressed.

And at the same time and place personally appeared before me, the undersigned, Albert P. Lewis, who is personally known to me to be the secretary of the Indianapolis, Bloomington and Western Railway Company, and being by me duly sworn, did depose that he is and was the secretary of the Indianapolis, Bloomington and Western Railway Company, and that he signed and executed the foregoing instrument, and affixed the seal of the said company thereto, and that the seal thereto affixed is the corporate seal of the Indianapolis, Bloomington
186 and Western Railway Company.

And at the same time and place personally appeared before me, the undersigned, William Dennison and Robert Turner, to me well known to be the real persons who signed and executed the foregoing instrument upon their part, and they, the said William Dennison and Robert Turner, both acknowledged that they had executed the foregoing instrument and had accepted the trust therein created as their free and voluntary act for the uses and purposes therein expressed.

CIRCUIT COURT SEAL. CHAMPAIGN COUNTY, ILL'S.

E. T. WHITCOMB,
Clerk Circuit Court.

UNITED STATES OF AMERICA, STATE OF ILLINOIS,
Office of Secretary of State, ss:

I, Edward Rummel, secretary of state of Illinois, hereby certify that Edwin T. Whitcomb, esq., who signed the foregoing certificate, is now and was at the time of signing the same clerk of the circuit court of Champaign County and State of Illinois, duly commissioned and qualified to office, with full power by the laws of this State to issue
187 certificates as aforesaid; that said certificates is in due form of law and by the proper officer, and that full faith and credit are due to his official attestations.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this first day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-sixth.

[GREAT SEAL OF STATE.]

EDWARD RUMMELL,
Secretary of State.

Exhibit G to original bill same as Exhibit A to petition of Joseph T. Thomas, page of this record.

188 DEFENDANT'S ANSWER.

Answer of Farmers' Loan & Trust Co.

And now comes the defendant, the Farmers' Loan and Trust Com-

pany, one of the above named defendants, and files this its separate answer to the said bill, the said defendant saving and reserving to itself all just right of exception to the manifold errors and insufficient statements in the said bill contained, for answer to the said bill, or to so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering says: That the said Indianapolis, Crawfordsville and Danville Railroad Company was duly incorporated at about the time, and for the purposes, and with the powers as stated in the bill, and that on the 12th day of July, 1869, the said corporation was indebted of $1,500,000, as stated in the bill, and that said debt was evidenced by bonds, as stated in the bill, and the same was secured by a first mortgage lien on all the property of said corporation, as stated in the bill, including its tolls and franchises.

Defendant further admits, on the 29th day of February, 1867, the Danville, Urbana, Bloomington and Pekin Railroad Company
189 was duly incorporated, as stated in the bill, with all the powers and for the purposes as stated in the bill.

Defendant further admits that on the first day of April, 1869, the said last-mentioned corporation duly made the trust deed or mortgage to the defendant, conveying its entire line of railroad then in existence, and thereafter to be in existence, extending from the city of Pekin, in Tazewell County, Illinois, through or as near as practicable to the towns of Tremont, Mackinawtown, Concord, Bloomington, Leroy, Mahomet, Champaign City, Urbana, and St. Joseph, to the east boundary of the State of Illinois, including all the railways, crossings, rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings, and all machine-shops and other shops, and all other real and personal estate held or acquired, or hereafter to be acquired or held, by the said company, its successors or assigns, for use in connection with the railroads of the said Danville, Urbana, Bloomington and Pekin Railroad
190 Company, or with any part thereof, or with the business of the same, including all locomotives, trucks, cars, and other rolling-stock or equipment, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or any part thereof, or of any of the equipments or appurtenances of the said railroads, or any part thereof, and all machinery of all kinds, and all and singular the other personal property of every nature, kind, and description whatever belonging to the said Danville, Urbana, Bloomington and Pekin Railroad Company, and all real estate of every kind belonging to the said Danville, Urbana, Bloomington and Pekin Railroad Company wherever the same may be located; and also all franchises connected with or relating to the said railroad, together with all the other properties, rights, tolls, incomes, tenements, rents, issues, and profits as is in and by said trust deed or mortgage expressed, reference thereto being had the contents thereof will fully and at large appear, a certified copy of which will be produced to the court as it may direct, in trust to secure the payment of 2,000 bonds of $1,000 each, amounting in the aggregate to $2,000,000, pay-
191 able on the first day of April, 1909, at the city of New York, with interest thereon at the rate of seven per centum per annum, payable in the city of New York on the first days of April and October in each year, from the date to the maturity of said bonds, on the surrender of the coupon or interest warrant for each semi-annual install-

ment of interest annexed to said bonds, the principal and interest of said bonds being payable in gold.

This defendant, further answering, says that it had full power and capacity to and did accept said trust imposed on it by said indenture.

Defendant, further answering, admits that the said Danville, Urbana, Bloomington and Pekin Railroad Company did issue, utter, and put in circulation in the usual course of business and for value, the entire issue of bonds provided for in said indenture, amounting to the sum of $2,000,000, and that the entire amount of said issue of bonds were purchased in good faith, and are now held and owned by various
192 persons and corporations both in Europe and America, many of whom are unknown to this defendant, and it cannot therefore name the same; and that said entire issue of bond are now outstanding and unpaid, except the interest warrants thereon maturing prior to the first of October, 1874, all of which interest warrants falling due prior to said first day of October, 1874, have been paid, as this respondent is advised and believes.

This defendant admits the consolidation of the Danville, Urbana, Bloomington and Pekin Railroad Company and the Indianapolis, Crawfordsville and Danville Railroad Company, of Indiana, and that said agreement of consolidation was ratified by the directors and stockholders of both of said corporations, and that said consolidation was legal, and that the consolidated corporation is called the Indianapolis, Bloomington and Western Railway Company, and that the Indianapolis, Bloomington and Western Railway Company became vested with all the rights, properties, franchises, and privileges, and subject to all the debts, liabilities, and obligations of the original companies aforesaid.

193 Defendant further admits that thereafter, to wit, on or about the first day of October, 1869, the said consolidated company duly executed and delivered to this defendant, as trustee, a mortgage or trust deed, whereby it conveyed to this defendant (subject to said two first described trust deeds) all and singular the property, rights, and franchises of said consolidated railway, extending from the city of Indianapolis, through Crawfordsville, Indiana, through Danville, Urbana, and Bloomington, to Pekin, in the State of Illinois, being about 210 miles in length, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, roadway, goods, and chattels used in or connected with the operation of the said railroad, including all rents, tolls, issues, and reversions of every nature and kind whatever, including all the property between the said terminal points which the said consolidated railway company had owned or possessed, or might thereafter acquire, in trust, to secure the payment of the principal and interest of the issue of 5,000 bonds of $1,000 each, numbered from one to 5000, inclusive, bearing date the first day of October, 1869, payable to bearer, in the city of New York, on the first day of October,
194 1909, principal and interest payable in gold, bearing interest at the rate of seven per cent. per annum, payable semi-annually, in the city of New York, in gold, on the first day of October and April of each and every year from the date till the maturity of the said bonds, which interest payments were evidenced by interest warrants or coupons attached to said bonds, and that said mortgage was duly recorded in each and every county through which said line of road passed in the said States of Indiana and Illinois, a copy of which will be produced as the court may direct.

Defendant further admits that the Indianapolis, Bloomington and

Western Railway Company did retire all said sum of $1,500,000 of bonds of the Indianapolis and Crawfordsville and Danville Railroad Company, heretofore mentioned, and did issue, in lieu and exchange therefor, $1,500,000 of the said bonds, secured by the above last-described indenture, of date October 1st, 1869.

Defendant further admits that said Indianapolis, Bloomington and Western Railway Company did issue and put in circulation, in
195 the usual course of business, and for value, its further issue of $1,500,000 of said last-mentioned issue of bonds, for the purpose of borrowing money for the corporate use, and in order to provide additional equipments and machinery for the operation of said roads.

Defendant further admits that no part of the issue of $2,000,000 of the Danville, Urbana, Bloomington and Pekin Railroad Company above mentioned have ever been retired.

Defendant further admits that the remaining $2,000,000 of the last issue of bonds, secured by the indenture of October 1st, 1869, have never been sold or put in circulation, and constitute no indebtedness of or lien upon the property of said corporation.

Defendant, further answering, says that they have no knowledge, information, or belief as to the truth of the allegation in the bill; that the said Indianapolis, Bloomington and Western Railway Company, on the first day of October, 1870, made another mortgage or trust deed to William Denison and Benjamin E. Smith, to secure another issue of bonds for the sum $1,500,000, and that said last issue of bonds
196 was put in circulation; therefore this defendant neither admits or denies the same, but calls for strict proof of said allegation in the bill, if the same is deemed material by the complainants.

But this respondent says that if this last-mentioned series of bonds was ever issued and put in circulation and secured by said last-mentioned indenture, that the said last-mentioned series of bonds, and the indenture so made to secure the same, is a junior lien to both of said indentures aforementioned, made to this defendant, which said first mentioned two indentures made to this defendant are prior liens on all the property in and by the said indentures conveyed.

Defendant, further answering, says, as to the allegation of the existence of a corporation called the Havana, Mason City, Lincoln and Eastern Railway Company, it has no sufficient information, knowledge, or belief to admit or deny the same, and therefore calls for proof of said allegation, if the same is deemed material by the complainants. And as to the further allegation in the bill, that said last-mentioned
197 corporation, on the 29th of June, 1872, executed and conveyed all its property, franchises, etc., to the said Indianapolis, Bloomington and Western Railway Company, as is in and by said bill alleged, this respondent has no sufficient knowledge, information, or belief to enable it either to admit or deny the same, but calls for strict proof of the same, if it be considered material by the complainants.

And as to the allegation in the bill that the said Indianapolis, Bloomington and Western Railway Company became vested with the property and franchises of said Havana, Mason City, Lincoln and Eastern Railway Company, or that the said Indianapolis, Bloomington and Western Railway Company did, on the 29th of June, 1872, or at any other time, make, execute, and deliver a certain other indenture of mortgage or deed of trust, conveying to the defendants, William Denison and Robert Turner, its railway from Champaign, in Champaign County, Illinois, westwardly to the other terminus through White Heath, Piatt County;

Clinton, De Witt County; Lincoln, Logan County; Mason City and Havana, in Mason County; and also from the said town of White
198 Heath, by the way of the town of Monticello, in Piatt County, to the city of Decatur, in Macon County, all in the State of Illinois, with all its franchises and other property between the said terminal points in said last indenture mentioned, if any such exists, to secure an issue of 5,500 bonds of said Indianapolis, Bloomington and Western Railway Company, of $1,000 each, bearing date July 1st, 1872, payable to bearer July 1st, 1912, &c., this defendant has no sufficient knowledge, information, or belief to enable it either to admit or deny the same, but calls for strict proof thereof. But respondent says if any such indenture of mortgage as last above mentioned has been made, and such series of bonds issued, they constitute no lien whatever on any of the property conveyed by the said two indentures of April and October, 1869, made to this defendant.

Defendant, further answering, says that as to the allegation in the bill that after the consolidation between said Indianapolis, Crawfordsville, and Danville Railroad Company with the Danville, Urbana, Bloomington and Pekin Railroad Company, that the principal
199 office of said consolidated corporated Indianapolis, Bloomington and Western Railroad Company was located at and has ever since remained at the city of Urbana, Champaign County, Illinois; That all meetings of shareholders for the purpose of elections and the transaction of other corporate business has always been held at this last-named place, and that prior to the 8th day of August, A. D. 1870, the said Indianapolis, Bloomington and Western Railway Company possessed only a small amount of equipments compared with the present ownership; and that since the 8th day of August, A. D. 1870, it has purchased and acquired a large amount of personal property, consisting of engines, cars, tools, machinery, &c.; and that the value of such property purchased since the 8th day of August, A. D. 1870, and now owned and possessed by it, amounting in the aggregate to over $1,500,000. And this defendant has not sufficient knowledge, information, or belief to enable it to either admit or deny the same, and therefore calls for strict proof of said allegation, if the same be considered material by the plaintiff.

200 But this defendant, further answering, says that even if it be true that any portion of the rolling stock of said consolidated company was purchased after the said 8th day of August, A. D. 1870, the same was purchased, as defendant is advised and believes, with the proceeds arising from the sale of bonds secured by the two indentures made to this defendant above described.

This defendant, further answering, says that it is advised and believes that whether said rolling-stock and other property of said consolidated company was purchased before or after said 8th day of August, A. D. 1870, and whether or not the same was purchased with the proceeds of the sale of bonds secured by the two indentures made to this defendant above described, that such two indentures made to this defendant are now valid, paramount, first liens on all the property owned by said consolidated corporation.

This defendant says, as it is advised and believes, the said two indentures made to this defendant above described by their terms cover all property then acquired and thereafter to be acquired by said
201 consolidated corporation, and that the said bonds were put upon the market and sold with the distinct understanding that they were, by the terms of said indenture, valid, paramount, first liens on

all property then owned and thereafter to be acquired, and were purchased on the market for value paid at the time with the same understanding by the cestus que trust of this defendant; and that even if by the constitution of the State of Illinois, adopted on the 8th day of August, A. D. 1870, it is declared that the rolling-stock of railroads should be considered to be personal property, that such constitution, having been adopted long after said indentures were made and bonds solds secured thereby, that such constitution cannot affect the validity of said securities upon said property, covered or intended to be covered thereby; and therefore this defendant denies that said constitutional provision in any way affects its rights under said two indentures of prior date.

This defendant, further answering, says that the allegation in the bill that the said Indianapolis, Bloomington and Western Rail-
202 way Company has become indebted, by way of notes, acceptances, and other obligations, to the amount of two million and a half dollars, for which negotiable paper has been issued, defendant says that it has not sufficient knowledge, information, or belief to enable it to admit or deny the same; and as to their allegation in the bill that the said paper is becoming due from time to time, and that the said corporation is without any earnings at present in consequence of a large decrease in the business of the company, this defendant has no knowledge, information, or belief sufficient to enable it to admit or deny the same.

This defendant, further answering, admits that suits have been begun in the different courts in Indiana and Illinois, and also in the United States courts, against said railway company, and that divers creditors are now commencing the same with a view to take immediate steps to secure judgments against said corporation and issue executions thereon and levy on property of the said corporation which is necessary for its proper operation in its business as a common carrier. But this defend-
ant, further answering, denies that obtaining such judgments
203 and executions would give such creditors any priority over the said two indentures made to this defendant.

As to the further allegation in the bill that, in November, A. D. 1874, the said Indianapolis, Bloomington and Western Railway Company made and executed a trust mortgage of all singular chattels and personal property to defendant, Joseph T. Thomas, embraced therein all singular the personal property of every kind, character, and description belonging to said corporation—the said trust mortgage being executed as security for all, and for the benefit and payment of such creditors as hold notes, acceptances, &c., of the said Indianapolis, Bloomington and Western Railway Company not included in the bonded indebtedness—this defendant says it has not sufficient knowledge, information, or belief either to admit or deny the same, and therefore calls for strict proof thereto.

But this respondent says that even if such indenture has been made and recorded as is in and by the bill alleged, it in no way affects the validity of the said two indentures made to this defendant as aforesaid
as valid, paramount, and first liens upon all the property em-
204 braced in and intended to be embraced in the said two indentures made to this defendant. As to the allegation in the bill that in consequence of the general depression of business in the fall of the year A. D. 1873, and thus thereby the said Indianapolis, Bloomington and Western Railway Company has not been able out of its earnings to provide for its commercial liabilities and semi-annual install-

ments of interest of its bonded obligations, in consequence of which it made default in the payment of the interest due upon all classes of its bonded obligations, and that it made default in the payment of the interest of the mortgage of October 1st, A. D. 1869, on the first day of October, A. D. 1873, and also on the first day of April, A. D. 1874, and that it made like default in the payment of the semi-annual installment of interest due on the mortgage bonds issued in the name of the Danville, Urbana, Bloomington and Pekin Railway Company, this defendant denies the same, and says that, as it is informed and believes, all the semi-annual installments of interest falling due on the two indentures made to this defendant above described prior to the 1st day of October, A. D. 1874, were paid at maturity. But this re-
205 spondent says that even if it be true, as in and by said bill alleged, that default was made in the payment of the semi-annual installments of interest on the said two indentures made to this defendant in April and October, A. D. 1873; then, by the terms of the said indentures, this defendant, after six months had elapsed from the time of such default, had a right to enter into and take possession of all and singular the real and personal property of the said Indianapolis, Bloomington and Western Railway Company covered by the said two indentures made to this defendant, together with the incomes and profits thereof, and to sell and dispose of all and singular the said property conveyed or intended to be conveyed by the said two indentures made to this defendant, as in and by the terms of said indentures will more fully and at large appear. Certified copies of the same, herewith filed A & B, and marked Exhibits A & B of this answer, to which the defendant craves leave to refer the court for fuller contents thereof and made part thereof.

Defendant, further answering, says that it is and always has
206 been ready and willing to execute the trust imposed in it in and under their said two indentures, and says that it has not been advised of any default in the payment of any semi-annual installment of interest falling due for the same prior to the first day of October, A. D. 1874, and that if any default for the period of six months to pay such semi-annual installments of interest provided for in and by said indentures has occurred, it is not advised of such default. And this defendant says it has not been requested by a majority of the holders of the said bonds secured by said two indentures made to this defendant to institute proceedings to foreclose the same for such default.

This defendant further answers as to the allegations in the bill that the complainants, during the past three or four years, have loaned money to said corporation for the purpose of paying interest on the mortgage deed and paying for labor and supplies necessary in the operation of this line of road, that the said corporation is indebted to complainant in the sum of eight hundred and sixty-five thousand dollars.

This defendant says that he has not sufficient knowledge, in-
207 formation, or belief to enable it to either admit or deny the same, and calls for strict proof thereof if the same be considered material to complainants; and, as to the further allegations in the bill, that as much as five hundred thousand dollars of such indebtedness is for money advanced by the complainant to pay interest installments on the two million dollars mortgage of the Danville, Urbana, Bloomington and Pekin Railway Company, and on the three million dollars of bonds outstanding under the first mortgage of the Indianapolis, Bloomington and Western Railway Company, this defendant says it has not suffi-

cient knowledge, information, or belief to enable it to admit or deny the same, and calls for strict proof thereof.

But this defendant, further answering, says that if it be true, as in and by the said bill alleged, that the complainant did loan to said railway company sums of money with which it took up the semi-annual installments of interest of the bonded debt, secured by two indentures made to this defendant aforesaid, this defendant says that said coupons were paid by the company in due course of business; that before the maturity of said coupons the said railway company advertised
208 in the public newspapers in the city of New York that said coupons would be paid at maturity at a certain place in the city of New York, and were so paid at said time and place, and that if the complainant did loan to said railway company any portion of the funds necessary to pay, or that were used in the payment of said coupons, or any of them, that said loan is but a debt between said complainant and said railway company, and that the said loans, as this defendant is advised, cannot be deemed to be substitutions or renewals of the coupons falling due in October, 1873, and April, 1874, or at any other time, and that the plaintiff is not entitled by subrogation to the rights of the bondholders, but stands in no better position than any other general creditor of such corporation so far as such indentures are concerned.

And this respondent, further answering, says that as it is advised and believes, and so charges, that if the complainant did loan to said railway corporation any sum or sums of money for the purpose of paying said installments of interest, or for any other purpose, that it made such loan wholly upon the credit of said corporation's paper,
209 with the individual endorsements thereon of the president of said railway company, and of other directors, and upon the pledge of collateral securities deposited by said corporation with the said plaintiffs at the time said loans were made. This defendant says, as to the allegations in the bill, that the complainant held bonds secured by the said several indentures made to said railway corporation, and it has not sufficient knowledge, information, or belief to enable it to either admit or deny the same, and calls for strict proof thereof.

And this respondent says that if it be true that said complainant does hold any of said bonded debt that they have not called upon this respondent to take any steps to foreclose either of said indentures made to this respondent by taking possession of the mortgaged property, or by proceeding in equity, or by both, or by any other manner whatsoever. That this respondent is now, and always has been, ready and willing to execute the trust imposed upon it by said two indentures, and therefore this respondent denies that the said complainants are entitled to have the said mortgaged property, incomes, rents,
210 franchises sequestered and sold, but that the right to do so is in this defendant.

And defendant, further answering, says, as to the allegations in the bill, that the entire line of railway belonging to said corporation, in both Indiana and Illinois, has always been operated as a unit, as one continuous line of railway, and that the rolling stock and equipments have been used indiscriminately over the entire line, and that no portion of the equipments has been appropriated to any part of the railroad, and that the earnings and expenditures have not been kept separate. It has not sufficient knowledge, information, or belief to enable it to either admit or deny the same; therefore calls for strict proof of the same. And as to the other allegation in the bill, that at

least one million dollars derived from the sale of the extension bonds has been used in the purchase of equipments for the original main line, respondent has not sufficient knowledge, information or belief to enable it to either admit or deny the same, and therefore calls for strict proof thereof. But respondent says, if said rolling stock was purchased with the proceeds of said extension bonds, it was not
211 with any *any* understanding or agreement with this defendant, or with the holders of the bonds covered by the mortgages made to this defendant; that such extension bonds used for the purchase of the rolling stock, if any such were so used, should become the prior lien on said rolling stock, or any other equipments. And this respondent, further answering, says that, as it is advised and believes, there is no difficulty in ascertaining the rights of holders of bonds secured by the two indentures made to this defendant as aforesaid, but that the same are valid, paramount, and first liens on the property conveyed, or intended to be conveyed, by them.

And the defendant, further answering said bill, says that defendant, as the trustee in the said two indentures made to this defendant, claims just, legal, and valid lien prior to complainant and to all others, and upon all and singular the property embraced in and covered by said two indentures or trust deeds by the terms thereof, including any and all of such property which was held or owned by the mortgagor or grantor at the time of making such mortgages, or acquired sub-
212 sequently thereto, for the amount of all the bonds issued under and secured by the said two indentures or deeds of trust made to defendant—that is to say, bonds to the amount of five millions of dollars, with all interest accrued or to accrue thereon; and inasmuch as the said indentures to this defendant cover by their terms not only the said railroad from Indianapolis, in Indiana, to Pekin, in Illinois, with the appurtenances, equipments, and franchises, and other things particularly mentioned, and all other property, real and personal, and all interests therein owned or held by said railroad company, or thereafter to be acquired by it, in connection with said railroad, thereby particularly mortgaged, or otherwise, together with the tolls, rents, or profits gained thereby, and all franchises, rights, and privileges of said company of, in, to, or concerning the same, this defendant, in the performance of its duty to the bondholders, for whom it is trustee, claims one of both of said indentures is a paramount lien as well upon said line of railroad between Decatur and Champaign, and between Champaign and Havana, and the extension of the main line from Pekin to Peoria, and the appurtenances, equipments, and franchises thereof, and
213 other things embraced in said subsequent mortgages or deeds of trust as upon the said line of railroad between Indianapolis and Pekin, and the appurtenances, equipments, and franchises thereof; and in any event this defendant claims that the said mortgages or deeds of trust made to this defendant constitute first and paramount liens upon the said line of road from Indianapolis to Pekin, and in these places respectively, and upon all things appertaining thereto or connected therewith, and the franchises thereto belonging, and all things whatsoever which were mentioned, or specified, or referred to in the deeds of trust to this defendant.

And in respect to the rolling stock and equipments, if it be not as this defendant claims it to be, first and paramount liens upon the present rolling stock and equipments used upon and pertaining to said entire line, with all its extensions and branches, they are at least such first and paramount liens upon all such rolling stock and equipments

which was acquired up to the making of said subsequent mortgages or deeds of trust of October, 1870, and June, 1872; and such first and
214 paramount liens upon such portion of the rolling stock and equipments acquired subsequent to the making of such mortgages April and October, 1869, as shall correspond with the proportion which the length and business of the line between Indianapolis and Pekin bears to the length and business of the entire line, including branches and extensions.

Defendant, further answering, says that the business done upon the line between Indianapolis and Pekin is at least five times as much per mile as the business upon any other portion of what is called the extended line. And this defendant, further answering, says that in and by the terms of the Danville, Urbana, Bloomington and Pekin mortgage made to this defendant, it was provided that on the first day of April, 1873, and on the first day of April each year thereafter, the said mortgagor, their successors, and assigns, for the further security and ultimate redemption of the bonds secured by said mortgage, and for the creation of a sinking fund for that purpose, should pay to this defendant the full sum of ten thousand dollars, and that this defendant should de-
215 posit the same with itself or some other depository which in its judgment should be safe; and that the said moneys, together with the accumulation of interest thereon, should be laid out and invested in the purchase of bonds secured by the said indentures.

Defendant, further answering, says that in and by the said instrument it was further provided that in case default be made in the payment of the said sum of ten thousand dollars, to be paid on the first day of April, 1873, and on each succeeding first day of April thereafter, and that such default should continue for the period of six months, then this defendant had the option to enter into and take possession of all and singular of said railroad, of all its property and effects, and to operate the same, and in its discretion to sell and dispose of the same, and with the proceeds pay said mortgage debt.

Defendant here claims leave to refer to said instrument, herewith filed as Exhibit A of this answer, on inspection of which the contents of which will fully appear.

Defendant, further answering, says that the said railway com-
216 pany has made default in paying said sum of ten thousand dollars in the year 1873, and also in the year 1874, and has not paid to this defendant, or to any other person or corporation, said sum of ten thousand dollars, payable on the first day of April, 1873 and 1874, or any part thereof, by reason whereof the estate of this defendant in and to the property conveyed by the said mortgage of said Danville, Urbana, Bloomington and Pekin Railroad Company has become absolute at law, as well as its right to foreclose the same in equity.

Respondent denies that the complainant is entitled to the relief prayed for, or any relief whatsoever.

This respondent now having, as it is advised, fully answered to all of said bill, and prays that we may be hence dismissed, with its costs, &c.

FARMERS' LOAN & TRUST COMPANY,
By WILLIAMS, BURR & CAPEN,
Its Solicitors.

I. AUGUSTUS JOHNSON, of New York City,
Of Counsel.

217 CROSS BILL.

Cross-bill of Farmers' Loan & T. Co.

To the Hon. Lyman Lacy, judge and chancellor of said court:

Humbly complaining, by way of cross-bill, would most respectfully show unto your honor, your orator, the Farmers' Loan and Trust Company, a corporation of the city of New York, in the State of New York:

That heretofore, to wit, to the December term, 1874, of your said court, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, doing business under the name, firm, and style of Turner Brothers, filed on the chancery side of your honor's court their bill in equity, to which they make defendants your orator herein, The Indianapolis, Bloomington and Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas, in which bill it is alleged, among other things, first, that prior to the 12th day of July, 1869, there was a railroad corporation existing under the laws of the State of Indiana, called The Indianapolis, Crawfordsville and Danville Railroad Company, which corporation was vested
218 with full power to locate, construct, and operate a line of railroad from Indianapolis, Marion County, Indiana, westwardly through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren to the western-line boundary of the State of Indiana, and to procure the means to build and operate such line of road said corporation was vested with full corporate powers to borrow money and issue bonds secured by a mortgage upon the said line of railroad and its appurtenances and appendages, and with all other capacities and powers usually vested in such railroad companies under the laws of the State of Indiana, including the power to consolidate its stock and property with any connecting line of railroad lying in another State; all of which this complainant hereby admits and charges to be true.

And, secondly, said bill alleges, among other things, that prior to the said July 12, 1869, the said Indianapolis, Crawfordsville and Danville Railroad had become and was then indebted to divers persons and corporations in the sum of $1,500,000, evidenced by certain coupon bonds secured by a first mortgage on the entire line of railroad belong-
219 ing to such corporation, together with its appurtenances, equipments, tolls, and franchises; all of which this complainant hereby admits and charges to be true.

And, thirdly, said bill alleges, among other things, that by virtue of an act of the general assembly of the State of Illinois, approved February 28th, 1867, there was formed a corporation called the Danville, Urbana, Bloomington and Pekin Railroad Company, endowed with full power to locate, construct, and operate a line of railroad from Pekin, in Tazewell County, eastwardly through Bloomington, Mt. Pleasant, Champaign, and Danville, to the eastern boundary line of the State of Illinois; and in order to raise money necessary for completing, equipping, operating, and maintaining said line of railroad said last-named corporation was authorized to issue and dispose of its bonds, bearing interest not exceeding ten per cent., and to secure payment of the debt so created by a mortgage on the corporate property and franchises, and was further authorized to lease and purchase other lines of railway, and also to consolidate its stock and property with those of any
220 connecting line of railroad in another State; all of which this complainant admits and charges to be true.

And, fourth, said bill alleges, among other things, that in order to borrow money for the corporate purpose of the last above-mentioned railroad company, and to complete, equip, operate, and maintain its said line of road, the said Danville, Urbana, Bloomington and Pekin Railroad Company did sign, seal, execute, acknowledge, and deliver its certain deed of indenture, trust deed, or mortgage, unto the Farmers' Loan and Trust Company (your orator herein), conveying and transferring unto the said Farmers' Loan and Trust Company all and singular the line of railroad then constructed or authorized by law to be constructed from Pekin, Tazewell County, Illinois, through or as near as practicable to the towns of Tremont, Mackinac, Concord, Bloomington, Leroy, Mt. Pleasant, Mahomet, Champaign, Urbana, and St. Joseph, to the eastern boundary line of the State of Illinois, including all railways, rights of way, depot grounds and tracks, bridges, viaducts, culverts, fences, and other structures, depots, station-houses, engine-houses, and other buildings,
221 and all machine shops, and all other real or personal estate that is held or thereafter to be acquired by the said company for use in connection with the said line of railroads, including all locomotives, tenders, cars, and other rolling stock, and all machinery, tools, implements, fuel, and materials for constructing, operating, and repairing or replacing the said railroad, or any part thereof, together with the franchises connected with or relating to the construction, maintenance, and use of the said railroad, and also the tolls, income, and profit to be levied on the said property; the said conveyance being in trust for the purpose of securing the issue of 2,000 bonds of $1,000 each, bearing semi-annual interest, payable at the said Farmers' Loan and Trust Company, in American gold coin; and the said conveyance was duly recorded according to law in all the counties through which the said line of railroad passes within the time required by law, and did then and thereby become a first lien upon the said line of railroad from the city of Pekin eastwardly to the boundary line between the States of Indiana and Illinois; and that the said last-named railroad corpo-
222 ration did issue, utter, and put in circulation, in the usual course of business and for value, the entire issue of bonds provided for in said indenture, amounting to the sum of $2,000,000; and the entire amount of said issue of bonds still continues outstanding and unpaid by the said railroad corporation which originally issued them and its present successor, the Indianapolis, Bloomington and Western Railway Company, all of which this complainant admits and charges to be true. And complainant also avers that said mortgage created a like valid first lien on the completed main line of said railroad from Pekin to Peoria, and all the property of said company or its successors in said cities.

And, fifth, said bill alleges, among other things, that the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, and the Indianapolis, Crawfordsville and Danville Railroad Company, of Indiana, by articles of agreement dated July 12, 1869, consolidated their stock and property, and became one corporation, called the Indianapolis, Bloomington and Western Railway Company, which consol-
223 idation was ratified by the board of directors and stockholders of both of said corporations; and that by virtue of such consolidation the said Indianapolis, Bloomington and Western Railway Company became vested with all and singular the property, estate, privileges, and franchises, and subject to all the debts, liabilities, and obligations of the two original companies which had executed the said articles of consolidation; all of which this complainant admits and charges to be true.

And, sixth, said bill alleges, among other things, that on the first day of October, 1869, for the purpose of retiring the original issue of bonds made by the Indianapolis, Crawfordsville and Danville Railroad Company, amounting to $1,500,000, and also the issue put in circulation by the Danville, Urbana, Bloomington and Pekin Railroad Company as aforesaid, amounting to $2,000,000, and for the further purpose of borrowing money to provide new equipment and machinery for the adequate operation of the said new corporation, the Indianapolis, Bloomington and Western Railroad Company, the said last-named corporation did execute and deliver to the aforesaid
224 Farmers' Loan and Trust Company, of the city of New York, (complainants herein) its certain indenture of mortgage or trust deed, conveying all and singular the railway of the said last-named railway company, extending from the city of Indianapolis through Crawfordsville, Indiana, through Danville, Urbana, Bloomington, Illinois, to Pekin, being about 210 miles in length, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of the said railroad, including all rents, reservations, reversions of all nature or kind whatever, including all the property between the said terminal points which the said railway company then had, owned, or possessed, or might thereafter acquire, the said indenture being executed in trust to secure payment of an issue of 5,000 bonds of $1,000 each, numbered from 1 to 5000, bearing date October 1st, 1869, payable to bearer in the city of New York, on the first day of October, 1909, with semi-annual interest thereon at the rate of seven per cent. per annum, evidenced by interest warrants or coupons, payable in the city of New York on the first days of April and October of each year, principal and interest
225 payable in gold; and that the said Indianapolis, Bloomington and Western Railway Company proceeded to and did actually retire all and singular the issue of $1,500,000 of the bonds of the Indianapolis, Crawfordsville and Danville Railroad Company hereinbefore mentioned, and issued in lieu and exchange thereof $1,500,000 of the issue of bonds secured by the said indenture of October, 1869, and did also issue and put into circulation, in the usual course of business and for value, a further amount of $1,500,000 of said last issue of bonds, for the corporate use, and in order to provide additional equipments and machinery for the operation of said road, and that no part of the issue $2,000,000 of the bonds of the Danville, Urbana, Bloomington and Pekin Railroad Company, heretofore specified, was ever surrendered or exchanged for any portion of the bonds provided for by the indenture of October 1st, 1869, but that the entire amount of bonds issued under the provisions of said last-named conveyance amount in the aggregate to $3,000,000, and no more, and that the remaining $2,000,000 of
226 the bonds contemplated by the said last-named conveyance, are still in the custody of the Indianapolis, Bloomington and Western Railway Company and its agents, and representatives wholly unissued, and constitute no indebtedness of or lien upon the property of said corporation, all of which this complainant admits and charges to be true; and in addition thereto charges that said mortgage created a like valid lien (subject only to the prior mortgage above described of April 1, 1869) on the completed main line from Pekin to Peoria, including all the property of the said consolidated company in the said cities of Pekin and Peoria, in the State of Illinois.

And, seventh, said bill alleges, among other things, that on the first day of October, 1870, said Indianapolis, Bloomington and Western Rail-

way Company did duly execute and deliver its certain other trust deed or mortgage to defendants Denison and Smith, on its entire line of railroad from Indianapolis to Pekin, with all its equipments, etc., including all its property between said last-mentioned terminal points, to secure an issue of $1,500,000 bonds, dated October 1st, 1870, payable twenty years after their date, bearing interest at the rate of eight
227 per cent. per annum, on the first days of January and July of each year; that said bonds were sold, and are now outstanding, which orator herein believes to be true.

Said complainants aver, eighth, in this bill, that prior to the 28th day of June, 1872, there was a corporation of the State of Illinois, called the Havana, Mason City, Lincoln and Eastern Railway Company, and that on the said 28th day of June, 1872, the said last-mentioned corporation conveyed, by deed duly executed, to said I., B. & W. R. R. Co., all its property and franchises, and that said conveyance was legal.

This complainant, not being advised as to the truth of the matter set up in said eighth section of the bill, does not admit that the said conveyance, if made, was in all things legal, but, if the same is material, submit that for the consideration of the court.

Said complainants further say, in the ninth section of their said bill, that on the 28th of June, 1872, the said I., B. & W. R. R. Co. being then fully vested with the said line of railroad and its franchises,
228 prior to that belonging to said H., M. C., L. & E. Railway Co., did, being fully authorized thereto, sign, seal, duly acknowledge, and deliver to William Dennison and Robert Turner another mortgage or trust deed, conveying to said Dennison and Turner its line of railroad from Champaign, in Champaign County, Illinois; thence to the town of White Heath, in Piatt County, Illinois; Clinton, DeWitt County; Lincoln, Logan County; Mason City and Havana, Mason County, westwardly to the Mississippi River; and also from said town of White Heath, by way of Monticello, Piatt County, to the city of Decatur, in Macon County, Illinois, all in the State of Illinois, with all its property and equipments on said portion of its road, said conveyance being in trust to secure an issue of 5,500 bonds of $1,000 each, bearing date July 1st, 1872, payable to bearer on July 1st, 1912. principal and interest payable in gold coin of the United States, with interest warrants, till the maturity of said bonds, at the rate of seven per cent. per annum, payable on the first days of January and July of each year, and that said instrument was duly recorded, and that said 5,500 bonds, con-
229 templated in said last-mentioned trust deed, have all been either negotiated absolutely or by way of hypothecation as security in the due course of business, and that said last-mentioned bonds, known as extension bonds, are all now outstanding, either as sold or hypothecated as aforesaid.

This complainant says, as it is advised and believes, that such an indenture as is described in the said ninth section of the bill was made, and such series of bonds, either in whole or in part, put into circulation, but as to whether said last-mentioned indenture is legal, or whether the entire issue of said last-mentioned series of bonds has been put in circulation, it is not advised.

Said complainants aver, in the tenth section of their said bill, that the principal office of said I., B. & W. R. R. Co. ever since its organization has been kept at the city of Urbana, Champaign County, Illinois and that the meeting of its stockholders for the purpose of elections and other corporate business have been held at said Urbana. Said complainants also charge in said 10th section, that since the 8th of Au-

gust, 1870, said I., B. & W. R. R.Co. has acquired a large amount
230 of personal property, consisting of rolling stock, tracks, machinery, and supplies, in the aggregate amount to $1,500,000, and that it is claimed by certain of the creditors of the said I., B. & W. R. R. Co. that none of the said indentures of mortgage set out in said bill are liens on said property acquired since the 8th day of August, 1870, under and by virtue of the constitution of the State of Illinois.

This complainant, as to the allegations in said 10th section of the bill, says that it is not allowed that the principal office of said I., B. & W. R. R. Co. is and has been since its organization kept in the city of Urbana, in Champaign County, Illinois, but says it is informed and believes that the principal office of the said I., B. & W. R. R. Co. has, ever since its organization, been in the city of New York, in the State of New York.

This complainant further says that, as it is advised and believes, the two indentures made to it set out in the bill, by virtue of their terms and of the covenant for further assurances in each of them contained, are valid first liens on all the personal property of said I., B. & W. R. R. Co., at least such parts of it as properly belong to that of the
231 road covered by said indentures, without regard to the time when the same was purchased; that said indentures to it make a contract, and that the purchasers of the bonds said indentures are made to secure by their purchase acquired a right to such lien; that the constitution of the State of Illinois, adopted long after the execution and delivery of said indentures, could not affect the validity of said liens.

Said complainants, in the 11th section of their bill, charge that said I., B. & W. R. R. Co. have become indebted, by way of notes, acceptances, and other obligations outside of its bonded debt, in the sum of $2,500,000; that said debt is maturing, and that said corporation is without means of payment, in consequence whereof suits have been begun in the various courts of the States of Indiana and Illinois, and in the United States court, and that others are threatening to bring suits, obtain judgments, and sue out executions, and levy the same on the property of said company necessary for the operation of its railroad, and thereby secure a priority over the other creditors on its rolling stock and other property.

232 This complainant, as to the said assertions in the said 11th section of the bill, says it is not advised as to the extent of the floating or unsecured debt of said corporation.

This complainant says it is true, as it is advised and believes, that the said complainants have brought suit in the United States circuit court for the southern district of Illinois against said I., B. & W. R. R. Co., and have, within the present month of January, 1875, and by collusion with said defendant, or at least by default of said railroad company, obtained a judgment for nearly one million of dollars, by which said complainant, as orator believes, intend, if not prevented, to appropriate the whole or at least a large part of the rolling stock and equipments of said road, to the great damage of the holders of the bonds under the indentures made to this complainant.

Said complainants, in the 12th section of their bill, allege that on the day of November, 1874, said I., B. & W. R. R. Co. made a mortgage to the defendant, Joseph T. Thomas, on all its personal property to secure said floating indebtedness described in the 11th section
233 of the bill; and complainants aver that the same is a valid, first, and paramount lien on all and singular the goods and chattels and personal property therein described, anything in the said prior indebtedness to the contrary notwithstanding.

This complainant, as to the allegations in the 12th section of the bill, says that it presumes it is true that the said I., B. & W. R. R. Co., acting in collusion with the complainants in the bill, and with the intent to defraud the bonded creditors of said I., B. & W. R. R. Co. out of a considerable part of their securities, has made such an instrument as is described in said 12th section. But this complainant says that, as *as* it is advised, and so charges, said instrument, if any such is made, is not a paramount and first lien on all or any of the property of said I., B. & W. R. R. Co. in instrument described. But this complainant avers, as it is advised, the two indentures made to it, above described, are a valid first lien on all the property of said I., B. & W. R. R. Co., at least so far as the same is connected with that part of the railroad described in or intended to be covered by said two indentures made
234 to this defendant of April 1 and October 1, 1869.

Said complainant, in the 13th section of their bill, say that by reason of the depression of business in the fall of 1873, and thence hitherto, the said I., B. & W. R. R. Co. has not been able to pay the semi-annual installments of interest on its bonded debt, and that it made default in the payment of the interest on the mortgage of eighteen hundred and sixty-nine, on the first of October, 1873, on the 1st of April, 1874, and made various other defaults in the payment of its semi-annual installments of interest on its various bonded debts; and that a number of said installments remain unpaid that fell due prior to the 1st of October, 1874.

This complainant, as to the said allegations in the said 13th section of the said bill, says that, as it is advised and believes, and so charges, that all the installments of interest that fell due on said bonded debt, represented by complainant herein, prior to the said 1st day of October, 1874, were paid in due course of business by the said railway company at maturity, at the place advertised for their
235 payment, and that no default was made in such payment of interest prior to the said 1st day of October, 1874, and that none of said coupons or interest warrants are now outstanding as debts against said corporation, except the one falling due on the 1st of October, 1874, on each of the mortgages to this defendant.

Complainant herein further says that the said complainants, in the 14th section of their said bill, say that from time to time for the past three or four years that they have loaned money to the said Indianapolis, Bloomington and Western Railway Company for the purpose of paying interest on its mortgaged debt and paying for labor and supplies necessary in the operation of said line of road, and that said corporation is justly indebted to said complainants in the sum of about $865,000, exclusive of interest, as evidenced by the promissory notes and obligations and book accounts of said corporation, of which even probably as much as $500,000 was used to pay interest installments on the $2,000,000 mortgage executed by the Danville, Urbana, Bloomington and Pekin Railroad Company, and on the $3,000,000 of bonds outstanding
236 under the first mortgage executed by the I., B. & W. Railway Company, and on the second mortgage for $1,500,000 issued by said last-named railroad company, and claims that for the sums so loaned to pay interest warrants, complainants are entitled to be subrogated to the security of said mortgages, and that said interest payments are mere substitutions for and renewals of the different coupons falling due in October, 1873, April, 1874, and January, 1874, respectively. And further, that said complainants own bonds issued under some of the several indentures of mortgage described in the bill, on all of which

default has been made in the payment of interest, whereby the said mortgages have become forfeited, and that by reason thereof complainants are entitled to have said mortgaged property sequestered and sold and the proceeds applied according to the several liens, priorities, &c.

This complainant, as to the allegations in the said 14th section of the bill, says that as to the complainants therein loaning money to the said railway company, and as to the amounts so loaned, and the uses to which said money was paid, it is not advised as to the truth or
237 falsehood of the same, but this complainant denies that those complainants are entitled to be subrogated to the security of the mortgages to the extent that the money loaned by them to the Indianapolis, Bloomington and Western Railway Company was used in paying interest on the mortgage debt, and says, as it is advised as to all said loans, if any were made by the said complainants to said railway company. As to the allegation that those complainants own bonds issued under the first mortgage and under the second mortgage, and that they own nearly $1,300,000 of the extension bonds, this complainant is not advised; but even if such allegations be true, this complainant is not advised; but even if such allegations be true, this complainant denies that for that reason complainants are entitled to have the property sequestered and sold, as this complainant is the trustee, having duly accepted the burden of the trusts imposed on it by the said two indentures of first mortgage made to it. This complainant represents the debt secured by the first mortgage on said property, and has never been called upon by said complainants in original bill to
238 take possession of or sell said property, and has never refused to execute and carry out the trusts imposed on it by said two indentures, but always has been ready and willing, and still is ready and willing, to execute the same; wherefore this complainant says that, as it is advised, those complainants have no equity to have the property either sequestered or sold at their own suit.

Said complainants, in the 15th section of their bill, aver that the entire line of railway owned by said Indianapolis, Bloomington and Western Railway Company, both in the States of Indiana and Illinois, has always been operated as a unit and as one entire line, and that the equipments have never been apportioned to any particular part of the line, and that at least $1,000,000 of the money derived from the sale of the extension bonds has been used for the purchase of equipments and betterments for the use and behoof of the original lines, by means of which the rights of the various classes of creditors of said Indianapolis, Bloomington and Western Railway Company have become very complicated, and that until very recently they were not advised
239 of the legal status of the personal property, and they had supposed that the said mortgages, under which said bonds were issued were undoubted liens on all and singular the equipments and personality of said corporation. Said bill prays for an account and for an adjustment of the parties of the various liens and for a foreclosure and sale of the property, calls for a receiver, &c.

Complainant herein would further show unto your honor that such proceedings were had upon said bill, and that without any notice on this complainant whatever, and, so far as complainant herein is advised, without any notice to any person or corporation owning any of the bonded debt secured by said two indentures made to this complainant, that on the 18th day of November, 1874, as this complainant believes, by collusion between said Indianapolis, Bloomington and West-

ern Railway Company and the complainants in the original bill, a decretal order was passed by your honor sequestering said railroad, its franchises, and property in the State of Illinois, and placing the same in the hands and under the control of a receiver appointed by
240 your honor, to wit, one George B. Wright, and that the same is now in the custody of said receiver, under the control of your honor.

Orator herein states that it has, as it is advised by its counsel, fully answered the said bill, and now, by leave of the court, files this its cross-bill in said cause. Orator herein craves leave to refer to its said answer.

Orator would further show to your honor that, as trustee for the holders of the bonds issued under the two indentures made to it, it now feels that it is its duty to said bondholders to file this cross-bill, as it is advised and believes that the original bill is filed in hostility to the interests of the bondholders for whom it is trustee; and that if orator should stand by and permit the foreclosure and decree on the principles stated in the original bill, and a sale of the property and a distribution of the proceeds to be made on the principles set out in the bill, it would not be freely and fully discharging the trust and confidence reposed in it by the said two indentures; and that it is advised
241 by its counsel that it is its duty, as such trustee in said two indentures, for the purpose of preventing the trust estate from being diverted from the purposes of the trust. Orator herein says that, as it is advised by its counsel, complainants in the original bill are asserting a lien to the extent of at least $500,000 for interest warrants that have been paid. Orator says that, as it is advised and believes, and so charges, said installments of interest were paid in due course of business by said railway company or its agents at maturity, and at the place advertised before maturity at which they were to be paid, and that by such payment a default was saved under the tenure of said trust deeds, and by means thereof said defendant, the I., B. & W. Railway Company, was permitted to retain possession of the mortgaged property, its rents and profits, earnings and incomes, and that the complainants in the original bill, if they did loan said railway company money for the purpose of paying said installments of interest, did so for the express purpose of preventing a default in payment, and thus enabling said railway company to retain possession of the prop-
242 erty and its tolls and incomes, and that complainants are now in equity estopped from setting up such a loan as a purchase of the coupons, or to claim to be subrogated to the mortgage security to the extent of such loans.

And your orator is further advised and believes, and so charges, that the payment of said installments of interest upon the surrender of said coupons by their holders to the company, or its agents, extinguished the lien character of said indebtedness, whether the money *was* used in payment therefor was loaned to the company by the complainants or not, and that if said coupons remain in the possession of the complainants as security for said loan or not, the said coupons, having been paid, cannot now share in said mortgage security.

Orator herein further charges that, as it is advised and believes, one object of the complainants in filing said bill is to have orator's indentures of mortgage decreed not to be a valid and first lien on the rolling stock and personal property of said railway company, to the extent in value of at least $1,500,000, when in truth and in fact, as
243 orator is advised, said indentures of mortgage are a valid first

lien on all said rolling stock and personal property, at least so far as the same pertains to that part of the line embraced in the said two indentures, or intended so to be.

Complainant further says, as it is informed and believes, the complainants in the original bill have, at the present term of the United States circuit court for the southern district of Illinois, obtained, by default, a judgment against said Indianapolis, Bloomington and Western Railway Company for the sum of about $900,000; and this complainant believes, with the intention of having an execution issued thereon, and a levy of the same on the rolling stock and personal property of said railway company that may be found in the State of Illinois, for the purpose of selling the same for their own benefit, and thus depriving the holders of the bonds secured by the two indentures, in which this complainant is trustee, of a part of the security for their said debt; and orators herein fear that the original bill is filed in bad faith, and with the purpose and intent of enabling the complainants to de-
244 prive the said bondholders of a valuable and material part of their security; and orator fears that if it is necessary to carry out their design that they would dismiss their bill, and have the receiver discharged in order to enable them to levy the said execution; and orator fears that unless the receiver of your honor, now in custody of the property, be retained for the benefit of this complainant (who files this cross-bill on behalf of itself and all the holders of the bonds secured by the said two indentures made to this complainant) that said bill will be dismissed, and an execution on said judgment in the United States circuit court will be levied on said rolling stock and personal property, and the same will be diverted from the trust created by said two indentures to this complainant.

Orator further avers that in and by the first mortgage or deed of trust made by the Danville, Urbana, Bloomington and Pekin Railroad Company to this complainant, which said trust deed is now a valid, first, and foremost lien, as orator is advised and believes and so
245 charges, on all the property in it described and intended to be covered thereby, it is provided, among other things, that on the first day of April, 1873, and on the first day of April of each succeeding year, the said railway company should deposit with orator as trustee the sum of $10,000, for the purpose of creating a sinking fund for the ultimate payment of the bonds issued under said mortgage as by the said indenture (a copy of which is herewith filed, and marked Exhibit A," and prayed to be made and taken as part and parcel of this cross-bill) will more fully and at large appear; and orator herein prays leave of the court to refer to the same for the full contents thereof.

Orator would further show to the court that it also provided in and by said indenture that if default be made in any such payment in to the said sinking fund, and that such default should continue for a period of six months, it should be lawful for orator, personally or by attorney, to enter into and upon the said railway and all property covered by said in dent-
ure, and to operate the same or sell the same and apply the pro-
246 ceeds of the sale to the payment of the bonds secured by said indenture, as will appear by the said instrument, reference to which is here made for the full terms thereof.

Orator would further show that no payment whatever has been made into said sinking fund, although the period of six months from the time the first and second payments should have been made has long since elapsed, by reason whereof the estate of orator in and to all said prop-

erty conveyed by said indenture has become absolute at law, and orator is entitled to have the same foreclosed in equity.

Orator further shows to the court that, as it is advised and so believes, the entire mortgaged property is but scanty security, and would not bring at a public sale enough to satisfy the two mortgages to orator, which are the first liens thereon; that a considerable part of the line covered by said two indentures is in bad condition, and growing worse, and that the security, although now insufficient, is constantly becoming more meager, and unless orator invokes the aid of your honor's court
247 for the protection of the interest of the holders of the bonds under said two first mortgages aforesaid, that the property will be depreciated, wasted, and diverted from the trusts imposed on it by said two indentures by the action of the complainants in the original bill, and other real or pretended unsecured creditors of said Indianapolis, Bloomington and Western Railway Company.

Wherefore orator files this its cross-bill, and makes each and every of the complainants and defendants in the said original bill defendants hereto, and prays that they, and each of them, be required to answer this cross-bill, but not under oath, the oath being expressly waived under the statute, and for an order to be entered in this cause that said receiver be required to retain possession of said property as the receiver of the court for the benefit of orators herein, and that said receiver be not discharged nor any order made tendering him without reasonable notice to and opportunity to be heard by orators, and that all funds accumulating in the hands of the receiver be held subject to the final decree herein, and for a decree that said mortgage to orator, made by
248 the Danville, Urbana, Bloomington and Pekin Railroad Company, as above described, be decreed to be a valid and first lien on all the property and effects of said railroad company on its main line, from Peoria, in the State of Illinois, eastwardly to the line of the State of Indiana, and to all, or at least an equitable proportion of all, the rolling stock and personal property of the said Indianapolis, Bloomington and Western Railway Company, appointed according to its mileage and relative amount of business, and that the amount due and unpaid on orator's said mortgage be ascertained and adjusted; and also for a decree finding the due on said consolidated mortgage described in the bill made by the Indianapolis, Bloomington and Western Railway Company to this complainant, and finding the just proportion of said amount of such indebtedness that shall be apportioned to that part of the consolidated line in the State of Illinois.

Orator here charges that, as it is informed and believes, only $3,000,000 of said $5,000,000 of bonds described in said consolidated mortgage were ever issued or put in circulation; that it was intended to
249 substitute $1,500,000 of them for a like amount of bonds issued by the Indianapolis, Crawfordsville and Danville Railroad Company on that portion of the consolidated line in the State of Indiana, and to substitute $2,000,000 for a like amount of bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, under orator's mortgage above set forth, on that part of the original line in the State of Illinois, and to use the remaining $1,500,000 for the further equipments and betterments for the consolidated line.

Orator says, as it is advised and believes, that $1,500,000 were substituted for bonds issued by the Indianapolis, Crawfordsville and Danville Railroad Company, but that none of the $2,000,000 intended to be

substituted for the like amount of bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company were ever so substituted or issued, but that the original issue of the Danville, Urbana, Bloomington and Pekin Railroad Company are still outstanding, so that only $3,000,000 of the bonds covered by said consolidated mort-
250 gage were ever issued and put in circulation.

Orator here charges that the said $2,000,000 of bonds covered by said mortgage of the Danville, Urbana, Bloomington and Pekin Railroad Company were, at or shortly after their date, issued and sold in the market in the usual course of business for value, and are now a valid and legal debt secured by said mortgage, and are wholly unpaid with the installment of interest fall due thereon on the first day of October, 1874, and the interest since accrued. As to whether any prior installment of interest on the same is unpaid, orator is not fully advised, but from information and belief charges there is not.

Orator would further show that said $3,000,000 bonds secured by said consolidated mortgage were, shortly after their date, issued, substituted for the other bonds of the Indianapolis, Crawfordsville and Danville Railroad Company as aforesaid, and sold on the market in the usual course of business for value; and that said entire $3,000,000 of bonds are a valid and outstanding debt against said Indianapo-
251 lis, Bloomington and Western Railway Company, and are wholly unpaid, together with the installment of interest thereon falling due on *on* the first day of October, 1874. As orator is informed and believes, all previous installments of interest thereon have been paid; and said $3,000,000 of bonds, with the accumulated interest, are, as orator is advised and believes, a second lien on the main line in the State of Illinois, and a first lien on that part of the consolidated line in the State of Indiana.

Orator here respectfully asks the court to adjust the equities as between these series of bondholders represented by this complainant as trustee as to any rolling stock or betterments that may have been purchased for the consolidated line out of the proceeds of the sale of said $1,500,000 of bonds issued under said consolidated mortgage; and after the amounts be so found, to apportion and adjust the same on orator's two mortgages.

Complainant says that it is trustee as aforesaid, and the bondholders under said two mortgages, for whom it is trustee, have a clear equitable right, and, as they insist, a clear legal right, whereof they
252 cannot be deprived by said railroad company, or by any one claiming through or under it by title subsequent to the said mortgages, to enforce their said mortgages separately and specifically upon all and singular the property whereon the said two mortgages constitute the first lien, respectively, apart from and disconnected with any property subsequently annexed to it, and whereon it may be held or adjudged that others have a lien prior or concurrent with the liens of this complainant, and that they are entitled, in so enforcing their said mortgages, to have the mortgaged property whereon this is the first lien sold separately for the satisfaction of their mortgaged debts alone, and not of that debt or debts due to other , and in such manner that the bondholders having such first mortgage liens thereon, in case other bidders shall not offer a price sufficient to pay in full their mortgage debts, may at their own option bid in or purchase such property whereon they have the first lien, in order to save loss of their mortgage debts without being compelled to purchase in connection therewith any prop-

erty subsequently acquired by the mortgagors, and whereon
253 it may be adjudged that the defendants herein or others have prior liens.

And for a decree that unless the defendants herein, or some of them, pay the amount so found to be due by the end of a short day, to be fixed by the court, that said property be sold without redemption, and the proceeds of said sale be paid to orators in trust for the payment of said bonds issued under said first mortgage, and said second or consolidated mortgage, as the decree may direct; and that on such sale all right, title, equity of redemption, or lien, or pretended lien, of all the said defendants in and to said mortgaged property, or any part thereof, be forever barred.

And that the purchaser be decreed to have a valid and perfect title to the property so sold, free and clear from all liens or claims of any kind or nature of the said defendants, or either or any of them, or of any person or persons or bodies politic or corporate, claiming or to claim the *the* issue or any part thereof by, through, or under them, in either or any of them.

And if on said sale there should not be enough to pay said
254 bonds and all costs of this proceeding, that the receiver be ordered to pay over to orators all funds in his hands in trust for the payment of said bonds, with all unpaid coupons that have or shall mature before said sale, as orators are now, by the terms and conditions of said mortgage, and by reason of the default aforesaid in payment of the sinking fund, entitled to all the tolls, incomes, receipts, and profits of said railroad, and they are entitled, as they are advised, to all funds in the hands of the receiver over and above the running expenses of operating said road.

And for all such other, further, and general relief as orators in equity and good conscience are entitled to. And as in duty bound, orators will ever pray, &c.

FARMERS' LOAN & TRUST COMPANY,
By WILLIAMS, BURR & CAPEN,
Its Solicitors.

I. AUGUSTUS JOHNSON, of New York City,
Of Counsel.

I. Augustus Johnson, being duly sworn, on my oath say that I have heard the above cross-bill carefully read, and that I am the attorney of the complainant in the said cross-bill.

255 Affiant further says that all the facts stated in said cross-bill to be true are true in fact, and those stated on information and belief to be true he verily believes to be true as there stated.

I. AUGUSTUS JOHNSON.

Subscribed and sworn to before me this 30th day of January, A. D. 1875.

Witness my hand and notarial seal at Bloomington, McLean County, Illinois, on the date above written.

ALONZO BURR,
Notary Public.

256 *1st amendment to cross-bill.*

In the circuit court, December term, 1875.

STATE OF ILLINOIS,
De Witt County:

MALCOLM C. TURNER ET AL.
vs.
INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al.

To the Hon. Lyman Lacy, sole judge of said court in chancery sitting:

Humbly complaining, showeth unto your honor, the Farmers' Loan & Trust Company by way of amendment to its cross-bill filed herein Feb'y 2, 1875, that since the filing of said cross-bill, William Dennison, one of the trustees in the second mortgage of the said Indianapolis, Bloomington and Western Railway Company referred to in said bill, has resigned his said trust under said second mortgage, and the board of directors of said railroad company, in pursuance of authority in them vested by the terms of said second mortgage, has by order of said board, at a meeting thereof held at Urbana, Ills., on the day of 1875, appointed defendant Joseph T. Thomas, of Philadelphia, Pa., as
257 trustee under said second mortgage to fill the vacancy occasioned by the resignation of said William Dennison aforesaid.

That said Thomas was present at said meeting and accepted said trust & is now acting in that capacity, wherefore comp't prays that said Thomas, trustee, may be made party defendant to said cross-bill of comp't and be required to answer all and singular the allegations in said cross-bill and this amendment thereto, and that process issue to bring said Joseph T. Thomas into court.

THE FARMERS' LOAN & TRUST COMPANY,
By R. E. WILLIAMS, *Its Solicitor.*

(Endorsed:) Filed Dec. 7, 1875. Wm. H. Harrison, cl'k.

258 *2d amendment to cross-bill.*

In the circuit court to the March term, A. D. 1876. In chancery.

STATE OF ILLINOIS,
De Witt County, ss:

THE FARMERS' LOAN & TRUST COMPANY
vs.
MALCOLM C. TURNER, JAMES TURNER, THOMAS E. Turner, Robert Turner, Archibald Turner, George M. Turner, doing business under the name, firm, style of Turner Brothers, The Indianapolis, Bloomington and Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, & Joseph T. Thomas. } No. 925. Cross-bill.

And now again come the said complainant in the said cross-bill, the said Farmers' Loan & Trust Company, by its solicitors, and leave there-

to at the August, A. D. one thousand eight hundred and seventy-five, term of the said court being first had and obtained, amends its said cross-bill by it hereinbefore filed as follows, to wit:

By inserting at the * in line 4 of page 27, of your orator's said cross-bill the following words, to wit:

"Your orator further says that it is informed and verily be-
259 lieves, and from such information and belief state the fact to be, that William Baum and William T. Sandusky, partners in trade, doing business under the firm name and style of Baum & Sandusky; Amos Conoway, Edward Goggle, Christian Grove, William R. Arthur, Ellen Wright, administratrix of all and singular the goods and chattels, rights and credits which were of Zachariah Wright, deceased, at the time of his death; the city of Champaign, Antye Raub, administratrix of all and singular the goods and chattels, rights and credits which were of John Raub, deceased; Isaac Tillotson, Jesse M. Richards, Michael Swartz, Silas F. White, S. Bartley Rodebaugh, William O. Smith, Lewis Gordon, Charles D. Webster, Benjamin M. Davies, & James M. Davies, late partners in trade, doing business under the firm name and style of Webster, Davis & Co.; Charles W. Davis, Amasa J. Merriman, Edwin C. Brewer, Mary Gilmore, John Gilmore, John Lamont, John S. Gillespie, John Danley, James Rayburn, jr., and Wells Pumphrey, late partners in trade, doing business under the firm name and
260 style of Rayburn & Pumphrey Robert McCart, administrator; of all and singular the goods and chattels, rights and credits, which were of Frank Beridel, deceased; John Davis, William J. Rhodes and Aaron P. Rhodes, administrators of all and singular the goods and chattels, rights and credits which were of John H. S. Rhodes, deceased; William Murray and Adam Murray, late partners in trade, doing business under the firm name and style of Murray Brothers; Chalton D. Walters, Oliver Pease, Calvin Crocker, Edwin Bayliss, James Rayburn, Silas Walters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, J. J. Devalon, S. H. Busey, S. T. Busey, and W. R. Earhart, late partners in trade, doing business under the firm name and style of Busey Brothers; Lyman Barnett, and Drury Thompson, have or claim to have some interest in the premises and property conveyed and covered by the mortgage to complainants herein as specified in orator's original cross bill, or some portion thereof, either as mortgagees, judgment creditors, grantees, or otherwise, the precise nature of which is unknown to your orator, but which interests, if any, are subsequent
261 to the said incumbrance and conveyance to your orator, and are all and singular subject, inferior, and subsequent thereto.

"Wherefor' your orator again invokes the aid of this honorable court of chancery, and to that end makes the said William Baum, William T. Sandusky, Amos Conoway, Edward Goggle, Christian Grove, William R. Arthur, Ellen Wright, administratrix of all and singular the goods and chattels, rights and credits which were of Zachariah Wright, deceased, at the time of his death; the city of Champaign, Antye Raub, administratrix of all and singular the goods and chattels, rights and credits which were of John Raub, deceased; Isaac Tillotson, Jesse M. Richards, Michael Schwartz, Silas F. White, S. Bartley Rodebaugh, William O. Smith, Lewis Gordon, Charles D. Webster, Benjamin M. Davies, Charles W. Davies, Amasa J. Merriman, Edwin C. Brewer, Mary Gilmore, John Gilmore, John Lamont, John S. Gillespie, John T. Danley, James Rayburn, jr., Wells Pumphrey, Robert McCart, administrator of all and singular the goods and chattels, rights
262 and credits which were of Frank Baridel, deceased; John Davis,

William Murray, Adam Murray, Chalton D. Walters, Oliver Pease, William J. Rhodes, and Aaron P. Rhodes, administrators of all and singular the goods and chattels, rights and credits which were of John H. S. Rhodes, deceased; Calvin Crocker, Edwin Bayliss, James Rayburn, Silas Walters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, J. J. Devalon, S. H. Busey, S. T. Busey, and W. R. Earhart, Lyman Barnett, and Drury Thompson, parties respondent hereto, and pray that they, and each of them, be duly summoned to be and appear before this honorable court on the first day of the next term thereof, and then and there, within a short day to be fixed and appointed by this court, full, true, and perfect answers to be ruled to make, and to make, to all and singular the allegations, matters, and things in your orator's said original cross-bill and this amendment thereto contained."

And your orator further prays as in and by its said original bill it has already prayed, and as in duty bound, &c.

THE FARMERS' LOAN AND TRUST COMPANY,
By WILLIAMS, BURR AND CAPEN, *Of Counsel.*

(Endorsed:) Filed Feb'y 1, 1876. Wm. H. Harrison, clerk.

263 *3rd amended cross-bill of F. L. & T. Co.*

In the circuit court of the March term.

STATE OF ILLINOIS,
De Witt County:

To the Hon. Lyman Lacy, sole judge of said court in chancery sitting:

First. Humbly complaining, would most respectfully show unto your honor, your orator, the Farmers' Loan and Trust Company, a corporation duly created by and a citizen of the State of New York, by this its amended cross-bill, that prior to July 12, 1869, there was a railroad corporation organized and existing under the laws of the State of Indiana called the Indianapolis, Crawfordsville and Danville Railroad Company, which corporation was vested with full corporate power to locate, construct, and operate a line of railroad from Indianapolis, Marion County, Indiana, westwardly through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren, to the western boundary line of the State of Indiana; and to procure the means to build and operate said line of road, said corporation was vested with full power to borrow money and to issue bonds secured by a mort-
264 gage or deed of trust on the said line of road, with all its appurtenances and appendages, and on the corporate franchises of said company, embracing all the property, real and personal, rights, and franchises of said corporation then owned or thereafter to be acquired by it, and with all other capacities and powers usually vested in such corporations under the laws of the State of Indiana, including the power to consolidate its stock and property with any other connecting line of railroad lying in another State. Prior to said July 12, 1869, the said railroad company had become and was indebted to divers persons and corporations in the sum of one million five hundred thousand dollars ($1,500,000) evidenced by certain coupon bonds secured by a first mortgage on said entire line of railroad belonging to said railroad corporation, together with its appurtenances, equipments, tolls, and franchises then owned or thereafter to be acquired by it.

Second. And that by virtue of an act of the general assembly of

the State of Illinois, approved February 28th, 1867, there was created a corporation of the State of Illinois called the Danville, Urbana, Bloomington and Pekin Railroad Company, which said corporation, by virtue of said enactment and organization thereunder, was endowed with full power to locate, construct, and operate a line of railroad from Pekin, in Tazewell County, Illinois, eastwardly through Bloomington, Mt. Pleasant, Champaign, and Danville, to the eastern boundary line of the State of Illinois, and in order to raise the money necessary for the building, equipping, operating, and maintaining the said line of railroad, the said last-named corporation was authorized to issue and dispose of its bonds, bearing interest not to exceed ten per cent. per annum, and secure the payment of the same by a mortgage or deed of trust on all its corporate property and franchises then owned or thereafter to be acquired by it; and by said charter and the general laws of the State of Illinois the said last named corporation was duly authorized to consolidate its stock and property with any connecting line of railroad in another State. That said last-named corporation was duly organized under said charter, and proceeded to construct said road thereunder.

Third. That the said two last-mentioned lines of railroad are connecting lines, and form one continuous line of railroad from the city of Indianapolis, in the State of Indiana, to the city of Pekin, in the State of Illinois.

Fourth. That in order to borrow money for the purpose of building, equipping, and maintaining its line of road the said Danville, Urbana, Bloomington, and Pekin Railroad Company, it being thereto fully authorized by its charter and the laws of the State of Illinois, on the 1st day of April, 1869, did duly sign, seal, execute, acknowledge, and deliver to your orator its certain trust deed or mortgage, a copy of which, together with its acknowledgement, is herewith filed and marked Exhibit A, and which your orator prays may be made a part of this your orator's bill of complaint, to which your orator craves leave to refer for the full contents thereof, by which said mortgage or deed of trust the said last-mentioned corporation conveyed to your orator all and singular its line of railroad then constructed or authorized by law to be constructed, including all rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences, and other structures, depots, engine-houses, and other buildings, and all machine shops, rolling stock, and machinery, and all other real and personal property then owned or held or thereafter to be acquired by the said last-named railroad company for use in connection with the said line of railroad, together with the franchises connected with or relating to the construction, maintenance, and operation and use of said railroad; and also the tolls, incomes, and profits realized, or to be realized, from the said property, the said conveyance being in trust upon certain conditions therein specified to secure the payment of two thousand (2,000) bonds, for the sum of one thousand dollars ($1,000) each, bearing interest at the rate of seven per cent. per annum, payable semi-annually, said principal and interest being payable in gold coin to your orator or bearer, in the city of New York, the principal of said bonds being due and payable to your orator or bearer on the 1st day of April, 1909, and bearing date of the 1st day of April, 1869, and said interest being payable on the first days of October and April of each and every year, which said mortgage or deed of trust was duly filed for record in the various counties through which said line of railroad is located, on the dates following, viz: In the county of Cham-

paign, on the 5th day of May, 1869; in the county of Piatt, on the 5th day of May, 1869; in the county of Vermillion, on the 5th day of May, 1869; in the county of De Witt, on the 6th day of May, 1869; in the county of McLean, on the 5th day of May, 1869; in the county of Tazewell, on the said 6th day of May, 1869.

Fifth. That by the second article of said mortgage or deed of trust it is provided, among other things, as follows: "That in case, first, default shall be made in the payment of any interest on any of the said
269 bonds according to the tenor thereof or of the coupons thereto annexed, or in the payment of any part of the principal of said bonds, or any of them, when the same shall become due, and that any such default shall continue for the period of six months; or, secondly, in case default should be made in any payment by these presents required to be made into the sinking fund hereinafter mentioned, and that such default shall continue for the period of six months." * * * In either of such cases it should be lawful for your orator or its attorneys or agents to enter into and upon all the property conveyed thereby, and to have and hold and to use the same, operating the same by its superintendents, agents, or servants, and conducting the business thereof, and from time to time make all repairs and replacements and such useful alterations, additions, and improvements thereto as might seem to be judicious; to collect and receive all tolls, freight, incomes, rents, issues, and profits of the said mortgaged estate, and after deducting
270 all necessary and proper expenses and outlays, and just compensation for orator's own services and for the services of *of* its attorneys and counsel employed in and about said business, to apply the surplus, if any, to the payment of all interest on the said bonds; and if any surplus remained after the payment of all interest then due, to apply such surplus upon the principal of all said bonds as then remained unpaid pro rata, and if any surplus remained after the payment of the said entire mortgage debt, to pay the same over to said railroad company, to which said clause of said mortgage your orator begs to refer for the full contents thereof.

Sixth. That by article third of said indenture of mortgage, it is provided, among other things, in substance as follows: That in case default should be made as aforesaid, and continue as aforesaid, it should be lawful for said trustee, after entry as aforesaid, or other entry, or without entry, personally or by its attorneys or agents, to sell and dispose of all and singular said mortgaged estate and property
271 at *at* public auction in the city of New York, or at the city of Urbana, or at such other place within the State of Illinois as the said trustee might select, and at such time as the said trustee might appoint after having advertised such sale for the time and in the manner in said third article provided, and make conveyance in pursuance thereof, and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees and other expenses and liabilities which may have been made or incurred by the said trustee in respect to the said mortgaged estate and property, or in operating and maintaining the same, or in managing the business thereof while in its possession, and all payments which may have been made for taxes or assessments on the same, as well as compensation for its own services, to apply the residue to the payment of such bonds as may be at the time unpaid, whether the same shall have previously become due or not, and the interest which at that time shall have
272 accrued on the said principal and be unpaid ratably, and to

which article your orator here craves leave to refer for the full contents thereof.

Seventh. That by article fifth of said indenture of mortgage it is provided in substance as follows: In case default should be made in the payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and such default shall have continued for the period of six months after the said coupon shall become due and been demanded as aforesaid, then the principal of all of said bonds should, at the election of the trustee, become immediately due and payable, to which said fifth article of said mortgage your orator begs to refer for the full contents thereof.

Eighth. That by article seventh of said mortgage, it is, among
273 other things, provided in substance as follows: That on the 1st day of April, 1873, and on the 1st day of April in each succeeding year thereafter, for the further security and ultimate redemption of the bonds intended to be secured thereby, and for the creation of a sinking fund for that purpose, the said grantor should pay to your orator the full sum of ten thousand dollars ($10,000), to be used in the purchase of the bonds secured thereby, in the manner in and by said seventh article provided, to which your orator also refers for the full contents thereof.

Ninth. That by the eighth article of said mortgage it is provided, among other things, in substance as follows: That if default should be made in the payment of the interest or principal of any of said bonds, as above specified, or as to any payment into the sinking fund, as above set forth, upon the requisition, in writing, signed by the holder or holders of not less than one hundred of said bonds, and proper indemnification by such holder or holders to the trustee, against the costs and expenses to be incurred, it should be the duty of the said trustee to
274 enforce the rights of the bondholders under the said indenture by entry, sale, or suit or suits at law or in equity, as the trustee, being advised by counsel learned in the law, should deem most expedient for the interest of the holders of said bonds, and to which said eighth article your orator begs to refer for the full contents thereof.

Tenth. That by article tenth of said mortgage it is provided, among other things, in substance, as follows:

That whenever and as often as the said grantor should thereafter acquire any lands, or any equipments, or any other property or things, of whatever name or nature, for use in connection with the said railroad, or of any part of either thereof, or of any other railroad which the said company was authorized by law to construct, or should acquire any other property, rights, franchises or things whatsoever, the said grantor should hold such after acquired property subject to the trusts of said indenture, and should make such other and further assurance of the title, from time to time, as should be requested, and to which tenth article your orator begs to refer for the entire contents thereof.

275 Eleventh. Your orator further shows unto your honor that the said two thousand bonds described in the said last-named indenture were, as your orator is informed and verily believes, duly issued, signed, and sealed by said last-named railroad company, and put upon the open market and sold to raise funds with which to build, operate, and equip said line of railroad, and that they were each purchased by the holders thereof in good faith for value, and that the entire principal

of said two thousand bonds, with large arrearages of past due interest thereon, are a valid outstanding debt against said last-named corporation, and constitute a valid paramount first lien on all the property and effects conveyed or intended to be conveyed by said indenture of mortgage last above described.

Twelfth. Your orator would further show unto your honor that default was made in the payment of the semi-annual installment of interest on said bonds which fell due on the 1st day of October, 1874, and upon every installment of interest falling due subsequent to the
276 date last aforesaid, and that said defaults have continued hitherto and still continue; that demand was duly made for the payment of a large amount of said coupons falling due on the said 1st day of October, 1874, on the day of their maturity, in accordance with the terms of said indenture, and upon such demand payment was refused and default made, which said default has continued hitherto and still does continue.

Thirteenth. Your orator would further show unto your honor that on the 13th day of March, 1876, it was duly requested in writing by the holders of a large majority of said two thousand bonds, to proceed and foreclose the said mortgage given to secure said last-named bonds, in accordance with the terms of the said indenture of mortgage last above described.

Fourteenth. Your orator would further show unto your honor that by virtue of the said default in payment, and of the request as last aforesaid, by virtue of the power vested in your orator by said
277 indenture of mortgage, it has declared, and does hereby declare, the entire principal of said two thousand bonds to be now due and payable.

Fifteenth. Your orator further shows unto your honor that it is advised by counsel learned in the law, and verily believes, that the entire principal of said two thousand bonds, with said several installments of interest falling due thereon on the 1st day of October, 1874, and on the 1st day of April, 1875, and on the first day of October, 1875, with the arrearages of interest on said past due installments, together accruing since the 1st day of October, 1875, are now due and payable to your orator, and are a valid subsisting first lien upon all the property conveyed, or intended to be conveyed, by said indenture of mortgage, and your orator is now entitled in equity to foreclose the same.

Sixteenth. Your orator further shows unto your honor that default has been made in the payment by the said grantor of the ten thousand dollars required by the said indenture to be paid on the 1st day
278 of April, 1873, and on the first day of April of each succeeding year thereafter, for the purpose of creating a sinking fund, no payment having ever been made to your orator for that purpose, by reason whereof your orator has a right to, and does hereby, declare said mortgage debt due and payable, according to the terms and conditions of said mortgage, and has a right to foreclose said mortgage for the payment of said entire mortgage debt.

Seventeenth. Your orator would further show unto your honor that by articles of consolidation duly entered into by and between the said Danville, Urbana, Bloomington and Pekin Railroad Company of Illinois, and the said Indianapolis, Crawfordsville and Danville Railroad Company of Indiana, which bear date the 12th day of July, 1869, and which were duly ratified by the boards of directors and stockholders of both said corporations, the said two corporations being thereto duly authorized by their respective charters and the laws of the States of

Illinois and Indiana, consolidated their stock and property, and
279 became one corporation under the name and style of the Indianapolis, Bloomington and Western Railway Company, by means of which said consolidation and by virtue of the laws aforesaid in that behalf, the said new corporation became vested with, all and singular, the property, estate, privileges, and franchises of the said two last-named corporations, and subject to all the debts, liabilities, and obligations of said two constituent corporations, a copy of which said articles of consolidation is filed herewith, marked Exhibit B, and prayed to be made a part of this your orator's bill, and to which reference is made for the full contents thereof.

Eighteenth. Your orator further shows that after the said consolidation, for the purpose of retiring the original issue of bonds made by the said Indianapolis, Crawfordsville and Danville Railroad Company, amounting to $1,500,000, and also for the purpose of retiring the issue of two millions of bonds put in circulation by the Danville, Urbana, Bloomington and Pekin Railroad Company aforesaid, and for
280 the further purpose of borrowing money to provide new equipment and machinery for the proper operation of the consolidated line, the said Indianapolis, Bloomington and Western Railway Company, being thereto duly authorized, did duly make, sign, seal, acknowledge, and deliver to your orator an indenture of mortgage or deed of trust, which said deed bears date on the 1st day of October, 1869, but was in fact not executed until the 20th October, 1869, whereby the said consolidated corporation conveyed to your orator, in consideration of the sum of one dollar and the trusts expressed in said instrument, its entire line of railroad, lying, being, and extending from its terminus, in the city of Indianapolis, in the State of Indiana, through Crawfordsville, in the last-mentioned State, westward to the State of Illinois, and through Danville, Urbana, and Bloomington, in said State of Illinois, further westward to Pekin, altogether being in length of railway about two hundred and ten miles, about ninety-three miles thereof being in the State of Indiana, and about one hundred
281 and seventeen miles thereof being in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, good', and chattels used in or connected with the operation of said railway, including all rents, reservations, and reversions of every nature and kind whatever, including all the property between the said terminal points which said grantor then had, owned, and possessed, or might thereafter acquire, which said indenture of mortgage was made in trust to secure an issue of five thousand bonds of one thousand dollars each, numbered, respectively, from one to five thousand, bearing date the 1st day of October, 1869, and payable to William Dennison, or bearer, in the city of New York, on the 1st day of October, 1909, the principal and interest thereof payable in gold, free of government tax, with interest warrants thereto attached, signed by the secretary, for the payment of interest thereon at the rate of seven per cent. per annum in gold, payable in the city of New York, on the successive 1st days of April and October of each year.

282 Nineteenth. Your orator would further show unto your honor that it is provided, among other things, in the second article of said indenture of mortgage in substance as follows: That the said grantor should, from time to time, make such other and further assurances of title, and do all such other acts as often as it might be lawfully required, in order to assure and perfect title in your orator to all the

property and effects conveyed or intended to be conveyed to your orator by said indenture.

Twentieth. Your orator would further show unto your honor that it is provided, among other things, in the fifth article of said indenture in substance as follows: That in case default should be made in the payment of any interest of said bonds according to the coupons thereto annexed, or in case default should be made in the payment of the principal of said bonds, or any of them, when the same should become due, without the consent of the holder of said bond upon which said
283 default should occur, the said grantor should, within six months after such default should occur, the same default still continuing, on the demand of the said trustee, surrender to such trustee all said mortgaged property and effects, together with all the records, book accounts, and money belonging to said company, and all management and control thereof, and all the expenses of taking, managing, holding, and operating said property should be paid from the income and profits thereof, and, in case of sale, out of the proceeds of sale, provided no such demand for possession should be made by such trustee until required by the holders of at least one-half of the issue of said bonds which should then be unpaid and outstanding.

Twenty-first. Your orator would further show unto your honor that it is provided in and by the sixth article of said indenture, among other things, in substance as follows: That in case default should be made as aforesaid, and continue as aforesaid, it should be lawful for
284 the said trustee, after entry as aforesaid, or other entry, or without entry, personally, or by agents or attorneys, to sell and dispose of, to the highest bidder, all and singular, the premises and property conveyed by the said indenture, or intended to be conveyed thereby, as an entirety, at a public auction in the city of Indianapolis, Indiana, at such time as said trustee might appoint, first having demanded of the said grantor full payment of all money then in default, after having advertised such sale for the time and the manner required in said sixth article, and upon such sale to convey to the purchaser thereof perfect title to said property, and after deducting from the proceeds of such sale all expenses of the sale an' conveyance, and all advances and liabilities which may have been made or incurred by said trustee in the discharge of said trust in and about said property, and all payments for taxes, assessments, and liens prior to the said last-mentioned indenture on said premises, or any part thereof, as well as reasonable compensation to said trustee for its said services, to
285 apply the residue to the payment of the principal and interest of said mortgaged debt in the manner provided in and by said sixth article of said indenture.

Twenty-second. Your orator would further show unto your honor that it is provided in and by the eighth article of said indenture, among other things, in substance as follows: That if default should be made in the payment of any half year interest on any of said bonds, and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand without the consent of the holder of such coupon or bond, then the principal of all said bonds secured by said indenture should be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and the trustee might so declare the same and notify the said grantor thereof, and upon the written request of the holders of a majority of said bonds then outstand-
286 ing, said trustee should proceed to collect both principal and in-

terest of all such bonds outstanding by foreclosure and sale of said property or otherwise, as in and by the said indenture provided.

Twenty-third. Your orator would further show unto your honor that it is provided in and by the ninth article of the said indenture, among other things, in substance as follows: That the said grantor would create and make a sinking fund for the redemption of said issue of bonds which said indenture was given to secure, by setting aside and depositing with three commissioners a sum of twenty-five thousand dollars annually, the first of such payments to be made on the 1st day of October, 1872, to be used for the redemption of said bonds, as in and by said article provided, which your orator, upon information and belief, hereby charges has never been done.

Twenty-fourth. Your orator herewith files a copy of said last-
287 mentioned indenture, marked Exhibit C, and prays that the same may be taken as part and parcel of this its bill of complaint, and prays leave to refer to the same, and to each and every article thereof, for the full contents of the same.

Twenty-fifth. Your orator would further show unto your honor that the said last-mentioned railroad company issued and put upon the market, and sold in due course of trade for value, or exchanged, as hereinafter mentioned, three thousand of said five thousand bonds which said last-mentioned indenture was given to secure, and said three thousand bonds so sold, with large arrearages of interest pas*sed* due and unpaid thereon, are a valid and subsisting debt against said consolidated corporation; and the said remaining two thousand of said issue of bonds are now in the hands of said trustee, never having been in any way issued, negotiated, sold, or otherwise disposed of, and said two thousand bonds are therefore no debt against said corporation.

288 Twenty-sixth. Your orator would further show unto your honor that with fifteen hundred of the said three thousand bonds mentioned in the last paragraph the said Indianapolis, Bloomington and Western Railway Company took up and retired the one million five hundred thousand dollars of bonds issued by the said Indianapolis, Crawfordsville and Danville Railroad Company aforesaid, so that the same ceased to be any debt of said corporation, or a lien upon any part of its property, and that said three thousand bonds of said issue of five thousand bonds aforesaid, together with the accrued interest thereon, are now a valid, subsisting, and first lien upon all that portion of the property of the consolidated company in the State of Indiana, and a valid subsisting second lien on all its property in the State of Illinois conveyed by said indenture to your orator, and that the said mortgage made by the said Indianapolis, Crawfordsville and Danville Railroad Company has been duly satisfied of record.

289 Twenty-seventh. Your orator further shows unto your honor that default was made in the payment of the installment of interest falling due on the 1st day of October, 1874, on said issue of bonds made by the said Indianapolis, Bloomington and Western Railway Company as aforesaid, and that demand was duly made for payment of a large number of said coupons of said issue at the office of said railway company, in the city of New York, on the 1st day of October, 1874, and on such demand payment was refused and default made, which has continued hitherto and still does continue, and that the several installments of interest falling due on said issue, viz, on the 1st day of October, 1874, and on the 1st day of April, 1875, and on the 1st day of October, 1875, remain unpaid, and that said default was made and continued without the consent of the holders of said bonds and coupons.

Twenty-eighth Your orator would further show unto your
290 honor that demand in writing was made on said trustee on the 13th day of March, 1876, by the holders of more than one-half of said three thousand bonds to proceed to foreclose the said mortgage given to secure the same, and to collect the entire principal and interest due upon said bonds by due course of law; that by reason of such default and demand said trustee is advised by counsel learned in the law that the principal of said entire three thousand bonds, together with all the arrearages of interest due thereon, is now due and payable, and that it is the right and duty of said trustee to proceed to foreclose said indenture of mortgage given to secure the same, and sell said mortgaged property for the payment and satisfaction thereof.

Twenty-ninth. Your orator would further represent that said last-mentioned mortgage was duly filed for record in the various counties through which said road is located on the following dates, viz:
291 In the county of Marion, State of Indiana, on the 25th October, 1869; in Boon County, Indiana, on the same day; in Hendricks County, Indiana, on the 1st day of November, 1869; in Montgomery County, Indiana, on the 2nd day of November, 1869; in Franklin County, Indiana, on the 3rd day of November, 1869; in Warren County, Indiana, on the 30th of October, 1869; and in Vermillion County, Indiana, November 2d, 1869; and in Tazewell County, Illinois, on 27th October, 1869; in McLean County, Illinois, on the 28th October, 1869; in Piatt County, Illinois, on the 29th October, 1869; in Vermillion County, Illinois, on the 30th day of October, 1869; and in the county of Champaign, Illinois, on the 4th day of November, 1879; and that said last-mentioned instrument bears date on the 1st day of October, 1869; yet the same was not acknowledged by the said railway company until the 12th day of October, 1869, and was not executed and acknowledged by the said trustee until the 20th day of October, 1869, wherefore your orator avers that the same was not in fact or in
292 law executed until the 20th day of October, 1869.

Thirtieth. Your orator would further represent unto your honor that afterwards, to wit, on the day of October, 1870, said Indianapolis, Bloomington and Western Railway Company, being thereunto duly authorized by resolution of its board of directors, duly made, executed, signed, sealed, acknowledged, and delivered to William Dennison and Benjamin E. Smith, citizens, then and now, of the State of Ohio, a certain other indenture of mortgage or deed of trust, commonly called a second, by which said indenture the said Indianapolis, Bloomington and Western Railway Company, in consideration of one dollar and of the trusts in said indenture expressed, conveyed to the said Dennison and Smith all and singular the entire railway of the said grantor lying, being, and extending from its terminus at the city of Indianapolis, State of Indiana, through Crawfordsville, in said last mentioned State, westward to the State of Illinois, and through Danville,
293 Urbana, and Bloomington, in said State of Illinois, farther west to Pekin, altogether being in length of railway track about two hundred and fourteen miles, about eighty-three miles thereof being in the State of Indiana, and about one hundred and thirty-one miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of said railway, including all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points,

which the said grantor then had, owned, and possessed, or might thereafter acquire, which said indenture of mortgage was duly filed for record, as your orator is informed and believes, in the various counties through which the said railroad is located on the following dates, to wit: In the county of Montgomery, Indiana, on the *the* 15th day of October, 1870; in Hendricks County, Indiana, on the 17th day of October, 1870; in Marion County, Indiana, on the 17th October, 1870; in Boon County, Indiana, on the 18th of October, 1870; in Fountain County, Indiana, on the 28th October, 1870; and in Warren County, Indiana, on the 28th October, 1870; and in the various counties in the State of Illinois shortly after the execution thereof, but the precise dates thereof are unknown to your orator.

294

Thirty-first. Your orator further shows unto your honor that said last-mentioned indenture bears date upon its face the first day of October, 1870, but was not acknowledged by the grantor until the 10th day of October, 1870, and by the grantee on the 11th day of October, 1870, and, as your orator believes was not finally executed and delivered until said last-mentioned date in contemplation of law and equity.

Thirty-second. Your orator would further show unto your honor that said last-mentioned indenture was made in trust to secure an issue of one million five hundred thousand dollars of second mortgage bonds of the said Indianapolis, Bloomington and Western Railway Company, the principal and interest of said bonds payable in the city of New York, the principal being payable twenty years from their date, and to bear interest at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July of each and every year, provided the first installment of interest should not be payable until the first day of July, 1871.

295

296

Thirty-third. Your orator would further show unto your honor that it is provided in and by the second article of said indenture, among other things, in substance as follows: That for the better assuring and confirming the title of the said trustees to the property conveyed, and intended to be conveyed, by said indenture, and any property or rights thereafter accruing to or acquired by said grantor appurtenant to said railway, the said grantor was, from time to time, to do such acts, and make such further conveyances and assurances in law as said trustees might be advised was necessary to carry out the object of said parties to the said indenture.

Thirty-fourth. Your orator would further show unto your honor that in and by the fifth article of said indenture it is provided, among other things, in substance as follows: That in case default should be made in the payment of any interest on the bonds secured by the last-mentioned indenture, according to the tenor of the coupons thereto annexed, or in case of default of the payment of the principal of any of said bonds when the same should become due, without the consent of the holder of said bond when such default should occur, said grantor should, within six months after such default occurred, the same default still continuing, deliver to said grantor the actual possession of the said granted premises, together with all the books, records, papers, accounts, and money of said grantor, and all management and control thereof, and all the expenses of taking, holding, managing, and operating said property if possession thereof be so taken, should be paid from the incomes and profits thereof, or, in case of sale, from the proceeds of such sale, and apply the residue of said proceeds as is in and by said article provided; provided that no such demand for

297

298 possession should be made by said trustees until they should be required so to do by the holders of at least one-half of said issue of said bonds then outstanding and unpaid.

Thirty-fifth. Your orator would further show unto your honor that by the sixth article of said indenture, it is, among other things, provided in substance as follows: That in case default should be made as aforesaid, and continue as aforesaid, it should be lawful for the said trustees, after entry, or without entry, to sell said mortgaged property at public auction in the city of Chicago, in the State of Illinois, at such time as said trustees might appoint, they having first demanded of the said grantor full payment of all money then in default, first having advertised the time and place of said sale as is in and by the said sixth section provided, and upon the receipt of the purchase money to convey said property to the purchaser, and after deducting from
299 the proceeds of such sale the expenses of the sale and conveyance, and all advances and liabilities which might have been incurred by said trustees in operating, controlling, and maintaining the said railway and property, and in managing its business and affairs, and all payments of taxes, charges, assessments, and liens, prior to the lien of the said last-mentioned indenture on said premises, or any part thereof, as well as reasonable compensation for the services of said trustees, to apply the residue in the payment of the interest and principal of said issue of bonds secured by said indenture in the manner provided in said sixth article.

Thirty-sixth. Your orator would further show that in and by the eighth article of said indenture last above described, it is, among other things, in substance provided as follows: That if default should be made in the payment of any half year's interest on any of said bonds,
300 and the warrant or coupon for such interest should have been presented, and its payment demanded, and said default should continue for six months after such demand without the consent of the holder of such coupon or bond, then the principal of all said bonds secured by said last-mentioned indenture should become immediately due and payable, anything in said bonds to the contrary notwithstanding, and the said trustees might so declare the same, and notify the said grantor thereof, and upon the written request of the holders of a majority of the said bonds then outstanding, said trustees should proceed to collect both principal and interest of all such outstanding bonds by foreclosure and sale of said property, or otherwise, as is in and by said last mentioned indenture provided.

Thirty-seventh. Your orator herewith files a copy of said last-mentioned indenture, marked Exhibit D, and prays that the same
301 may be taken as part and parcel of this its bill of complaint, and here craves leave to refer to the same, and to each and every section thereof, for the full contents of the same.

Thirty-eighth. Your orator further shows unto your honor that it is informed and believes, and upon such information and belief charges the fact to be, that the entire series of bonds said last-mentioned indenture was given to secure were issued and put upon the market, and negotiated for value in due course of business, and that the same, with large arrearages of unpaid interest thereon, are now a valid outstanding debt of said Indianapolis, Bloomington & Western Railway Company, and the same is a subsisting valid second lien on all the property and effects of said railway company in the State of Indiana, and is a subsisting valid third lien on all the property and effects in the State of Illinois of said railway company, as described in said mort-

gage, the lien of said last-mentioned indenture being junior and
302 subject to the liens of the said two indentures made to your orator as hereinbefore set forth.

Thirty-ninth. Your orator would further represent that it is informed and believes, and upon such information and belief charges the fact to be, that default was made in the payment of the installment of interest accruing on the said last issue of bonds, and falling due on the 1st day of July, 1874, and that demand was duly made for the payment of certain of said coupons falling due on that day at the office of said railway company in the city of New York, in July and August, 1874, and upon such demand payment was then and there refused and default made, which said default has continued thence hitherto without the consent of the holder or holders of said coupons or bonds, and that payment has not been made of the installments of interest accruing on said last series of bonds since said 1st day of July, 1874.

303 Fortieth. Your orator further shows unto your honor that it is informed and believes, and upon such information and belief charges the truth to be, that on or about the first of November, 1874, said last-mentioned railway company owed a large floating debt, and that for the payment of a great portion thereof, to wit, about half a million of dollars, the said Benjamin E. Smith, who was then and there also a director and the president of the said last-mentioned railway company, was security and endorser in his individual capacity, and as such bent his energies and influence to subserve the interest of such floating-debt creditors and secure the adjustment thereof to the prejudice of the priorities and rights of the mortgage bond creditors as aforesaid, and in furtherance of his said plan and determination said Smith did, on or about the 16th day of November, 1874, and but two days prior to the appointment of the receiver in the cause, fraudulently (and with-
304 out the authority or knowledge of the board of directors of said company, except a minority, who were also interested in such floating debt) attempt to transfer and convey to one Joseph T. Thomas, of Philadelphia, Pennsylvania, by chattel mortgage, all the rolling stock, machinery, and chattel property of said railway company, upon which, as your orators claim, a prior or first lien was created and made by and in favor of said mortgages described in the preceding paragraphs in this your orator's bill. That said chattel mortgage was executed without authority of law; that the grantee therein named was not present at the execution of said conveyance, nor was he advised of the execution of the same at the time, nor was the same delivered to him prior to the record thereof, nor was any property described in said mortgage delivered to said grantee therein, under or by virtue thereof or otherwise; that said mortgage was an attempted incumbrance upon what is claimed to be the chattel property of said company, in
305 order to defeat what had been previously conceded to have been the prior rights and equities of said mortgage bondholders; that a large portion of the debts attempted to be secured by said chattel mortgage were past due at the time of the execution thereof, and that but few of the general creditors holding said floating-debt claims were cognizant of the execution or intended execution thereof; as your orator is informed and believes, said so-called chattel mortgage is fraudulent and void, and is an apparent cloud upon the superior claim and title of your orator to the said mortgaged property, a copy of which chattel mortgage is herewith filed, and for greater certainty reference had thereto, marked Exhibit E.

Forty-first. Your orator further shows that it has been informed and verily believes, and so charges the truth to be, that the said William Dennison, one of the original trustees in said indenture, so made to said Dennison and Smith, as above described, has recently re-
306 signed his said trust, and that the said Joseph T. Thomas has been appointed and is now acting as such trustee in his stead.

Forty-second. Your orator further shows that it is informed and believes, and so charges the fact to be, that the said Indianapolis, Bloomington and Western Railway Company is wholly insolvent, and that its entire property and effects are wholly inadequate to pay the amounts due and owing under said several indentures to your orator and to the said Dennison and Smith, executed as above described.

Forty-third. Your orator would further show unto your honor that it is informed and believes, and so charges the truth to be, that William Baum and William T. Sandusky, Amos Conoway, Edward Goggle, Christian Grove, William R. Arthur, Ellen Wright, City of Champaign, Antye Raub, Isaac Tillottson, Michael Schwartz, Silas F. White, L. Bartly Rodebaugh, Wm. O. Smith, Lewis Gordon, Charles D.
307 Webster, Benjamin M. Davies, James M. Davies, Charles W. Davis, Amasa J. Merriman, Edwin C. Brewer, Mary Gilmore, John Gilmore, John Lamont, John S. Gillespie, John Danly, James Rayburn, jr., Robert McCart, John Davis, William J. Rhodes, Aaron P. Rhodes, William Murray, Adam Murray, Chalton D. Walters, Oliver Pease, Calvin Crocker, Edwin Bayliss, Silas Walters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, J. J. Devalon, S. H. Busey, S. T. Busey, Lyman Barnett, Drury Thompson, John Burnett, John Baker, John W. Buckner, and William Colsen each claim some interest in the property covered by said mortgages made to said trustees, as above set forth, as judgment creditors of said Indianapolis, Bloomington and Western Railway Company, but your orator avers that whatever interest said judgment creditors, or any of them, may have in and to said property the same is junior, inferior, and subordinate to the rights of said trustees in the three indentures first above described.

308 And your orator further shows that Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, doing business under the name, firm, and style of Turner Brothers, who were plaintiffs in the original suit, filed their bill as holders of bonds secured by the mortgages in this bill hereinbefore mentioned; that the said original bill was filed without any notice to or demand upon your orator to take proceedings as trustee under said mortgage; that such proceedings have been had; that said original complainants, the Turner Brothers, having failed to answer the original cross-bill of your orator, the said original bill, by the law and practice of this court, should be dismissed.

And your orator further shows that the said original complainants, the Turner Brothers, are merely nominal and not necessary parties to this proceeding, and are only made defendants by reason of their being plaintiffs in the original action, and that their interest as bond-
309 holders, if any, is protected by the trustees under the mortgages securing the same.

Wherefore your orator prays that each of the above-named parties and the said Indianapolis, Bloomington and Western Railway Company, Benjamin E. Smith, Joseph T. Thomas, and C. W. Smith, as the successors of William Dennison, trustee, and the said William Dennison,

be made defendants hereto, and that such of them as are not already in court be duly summoned by proper process to appear and answer this bill, but not under oath, their oaths being expressly waived, according to the statute in such case made and provided.

Forty-fourth. Your orator further shows that at and before the time of the making and delivery of the said two indentures above described, to wit, the said indentures made by the said Danville, Urbana, Bloomington and Pekin Railroad Company and the said Indianapolis, Bloomington and Western Railway Company to your orator, The Farmers' Loan & Trust Company, it was and ever since has been, and now is,
310 duly authorized by law to accept and execute such trusts as are imposed upon your orator by said indentures.

Forty-fifth. Your orator further shows that by reason of the insolvency of said Indianapolis, Bloomington and Western Railway Company, and by reason of the entire property and effects thereof being wholly inadequate to pay the amounts due under the said two indentures of mortgage given to your orator as aforesaid, your orator, as it is advised by counsel, is entitled to have a receiver appointed to take possession of and administer said mortgaged property under the control of this honorable court until a foreclosure can be had of said several mortgages and sale thereunder. Wherefore your orator prays that your honor will continue the receivership already established in this cause for the benefit of your orator, as well as for all other persons or corporations interested in said mortgaged property, and that all funds accumulated in the hands of the receiver be held subject to the final decree
311 herein, and for a decree that said mortgage to your orator, made by the Danville, Urbana, Bloomington and Pekin Railroad Company, as above described, be decreed to be a valid and first lien on all the property and effects of said railroad company on its main line from Pekin, in the State of Illinois, eastwardly to the line of the State of Indiana, and to all, or at least to an equitable proportion of all, the rolling stock and personal property to the said Indianapolis, Bloomington and Western Railway Company apportioned according to its mileage, and relative amount of business, and that the amount due and unpaid on your orator's said mortgage be ascertained and adjusted, and also for a decree finding the amount due on said consolidated mortgage described in the bill made by the Indianapolis, Bloomington and Western Railway Company to this complainant, and finding the just proportion of said amount of such indebtedness that shall be apportioned to that part of the consolidated line in the State of Illinois.

Your orator here respectfully asks the court to adjust the equi-
312 ties as between these series of bondholders, represented by this complainant as trustee, as to any rolling stock or betterments that may have been purchased for the consolidated line out of the proceeds of the sale of said $1,500,000 of bonds issued under said consolidated mortgage, and after the amounts be so found to apportion and adjust the same on your orator's two mortgages.

Forty-sixth. Your orator says that it is trustee as aforesaid, and the bondholders under said two mortgages for whom it is trustee have a clear equitable right, and, as they insist, a clear legal right, whereof they cannot be deprived by said railroad company, or by any one claiming through or under it by title subsequent to the said mortgages, to enforce their said mortgages separately and specially upon all and singular the property whereon the said two mortgages constitute the first lien respectively, apart from and disconnected with any property sub-

sequently annexed to it, and whereon it may be held or adjudged
313 that others have a lien prior or concurrent with the liens of this complainant, and that they are entitled in so enforcing their said mortgages to have the mortgaged property whereon this is the first lien sold separately for the satisfaction of their mortgaged debts alone, and of not of that debt or debts due to other , and in such manner that the bondholders having such first-mortgage liens thereon, in case other bidders shall not offer a price sufficient to pay in full their mortgage debts, may, at their own option, bid in or purchase such property whereon they have the first lien, in order to save loss of their mortgaged debts without being compelled to purchase therewith any property subsequently acquired by the mortgagors, and whereon it may be adjudged that the defendants herein or others have prior liens.

And your orator further prays for a decree that unless the defendants herein, or some of them, pay the amount so found to be due
314 by the end of a short day, to be fixed by the court, that said property be sold without redemption, and the proceeds of said sale be paid to your orators in trust for the payment of said bonds issued under said first mortgage and said second or consolidated mortgage as the decree may direct, and that your honor will ascertain the amount due upon said indenture made to the said Dennison and Smith, trustees, above described and if in case of a sale there should be a surplus over and above enough to pay the amount due on the two indentures made to your orator, and all necessary and proper expenses and costs of this litigation and sale and execution of said trust by your orator, that the surplus be paid to the holders of the bonds secured by the said indenture made to the said Dennison & Smith, trustees, pro rata, and that on such sale all right, title, equity of redemption, or lien, or pretended lien of all the said defendants in and to said mortgaged property, or any part thereof, be forever barred. And that the purchaser be decreed to have a valid and perfect title to the prop-
315 erty so sold, free and clear from all liens or claims of any kind or nature of the said defendants, or either or any of them, or of any person or persons, or bodies politic or corporate, claiming or to claim the same or any part thereof by, through, or under them, or either or any of them; and if on said sale there should not be enough to pay said bonds and all costs of this proceeding, that the receiver be ordered to pay over to your orator all funds in his hands in trust for the payment of said bonds, with all unpaid coupons that have or shall mature before said sale, as your orator is now, by the terms and conditions of said mortgage, and by reason of the default aforesaid in payment of the sinking fund, entitled to all the tolls, incomes, receipts, and profits of said railroad, and it is entitled, as it is advised, to all funds in the hands of the receiver over and above the running expenses of operating said road, and for all such further and general relief as your orator in equity and good conscience is entitled to. And, as in duty bound, your orator will ever pray, &c.

316 Forty-seventh. Your orator further prays your honor to permit this its bill of complaint to be filed as a substitute for and in lieu of its original cross-bill in the case of Malcom C. Turner et al. v. The Indianapolis, Bloomington and Western Railway Company et al., now pending and undetermined in this honorable court, and that this your orator's bill be permitted to be filed and taken as an amended and substituted, bill instead of said original cross-bill and the amendments

thereto, and by way of supplement thereto. And your orators will ever pray, &c.

FARMERS' LOAN & TRUST COMPANY,
By WILLIAMS, BURR & CAPEN,
Solicitors.

J. AUGUSTON JOHNSON,
J. D. CAMPBELL, AND
WILEY & PARKER,
Of Counsel.

I, J. Augustus Johnson, being first duly sworn, upon oath state that I have heard the foregoing amended bill read, and that I am the at-
317 torney of the complainant therein; that all of the facts stated in said amended supplemental bill to be true are true in fact, and the statements therein made on information and belief affiant believes to be true as stated therein.

Subscribed and sworn to before me this day of A. D. 1876.

(Indorsed:) Filed April 25th, 1876. Wm. H. Harrison, clerk.

318 *Answer of Denny, Blossom & Adriance.*

STATE OF ILLINOIS,
De Witt County, ss:

To the circuit court, March term, 1875.

THOMAS DENNY, JOHN B. ADRIANCE, JOSIAH B. Blossom et al.
a'ts
MALCOLM C. TURNER ET AL. } In chancery.

The joint and several answer of Thomas Denny, John B. Adriance, and Joseph B. Blossom, who for themselves and in behalf of all other persons having like interest with them in the matters and things hereinafter to be recited, not waiving any right of exception to the bill of complaint in this cause by reason of the numerous errors therein, for answer thereto say:

1st. That true it is that prior to the twelfth day of July, 1869, there was a railroad corporation organized and existing under the general laws of the State of Indiana, called the Indianapolis, Crawfordsville and Danville Railroad Company, and that the same was vested with the corporate powers to locate, construct, and operate a railroad from Indianapolis, Marion County, Indiana, through said State westward to the boundary line thereof, as in said bill alleged.

319 2nd. And true it is that such corporation was vested with power to borrow money and issue bonds and to secure the same by mortgage on its said line of railroad, its appurtenances and appendages, and with all other corporate powers usually vested in railroad corporations by the laws of the State of Indiana, including the power to consolidate its stock and property with any other connecting line of railroad lying in another State, as in bill alleged.

3rd. And that prior to the twelfth day of July, 1869, the said Indianapolis, Crawfordsville and Danville Railroad Company had become and was indebted to divers persons and corporations in the sum of one and one half million dollars, evidenced by certain coupon bonds

secured by a first mortgage on its entire line of railroad as aforesaid, together with all appurtenances, equipments, tolls, and franchises thereto belonging, as in bill alleged.

4th. And respondents, further answering, say that true it is that by virtue of an act of the general assembly of the State of Illinois, approved February 28th, 1867, there was created and organized a
320 corporation of the State of Illinois, called the Danville, Urbana, Bloomington and Pekin Railroad Company, and that said corporation was endowed with corporate power to locate, construct, and operate the line of railroad designated in said charter from Pekin, in Tazewell County, eastwardly through Bloomington, Mount Pleasant, Champaign, and Danville, to the eastern boundary line of the State of Illinois, and that in order to raise money for the completing, equipping, operating, and maintaining the said line of railroad the said corporation was authorized to issue and dispose of its bonds of the order and character in bill mentioned, and to secure the payment thereof by a mortgage on its corporate property and franchises as therein alleged, and that said corporation was further authorized to lease and purchase other lines of railway only when sustaining certain relations to its line, and that such corporation had power under the laws of Illinois to consolidate its stock and property with those of any connecting lines of railroad in another State, and that such several powers will fully appear from the laws of Illinois in the bill referred to.

321 5th. And respondents, admit the said Danville, Urbana, Bloomington and Pekin Railroad Company did for the purposes in bill alleged, on the first day of April, 1869, sign, seal, execute, and acknowledge and deliver its certain deed of trust unto the Farmers' Loan and Trust Company of the city of New York, for the uses and purposes therein expressed, conveying to said loan and trust company all and singular its line of railroad then constructed and to be constructed from Pekin, in Tazewell County, Illinois, to the eastern boundary line of the State of Illinois, as in said bill alleged, and that said deed of trust included all the rights, appurtenances, &c., of said railroad company as in bill alleged, and that the same was executed upon conditions as specified to secure the payment of two thousand bonds of one thousand dollars each, bearing semi-annual interest, and that the same was payable in the manner and at the place in bill alleged, and that such deed of trust was duly recorded in all of the counties through which said railroad company had located its line of road, and that such deed thereupon became a first lien upon the
322 said line of railroad, together with all of its rights, privileges, and appurtenances, as in said trust deed in detail specified.

6th. These respondents admit that the railroad company last named did thereupon, in accordance with its said powers, issue, utter, and negotiate for value, the said two million dollars of bonds, so secured by said trust deed to the Farmers' Loan and Trust Company, and that the same are still outstanding and unpaid, but these respondents aver that said bonds are not due, and that no person can now lawfully call for their payment.

7th. These respondents admit that the Danville, Urbana, Bloomington and Pekin Railroad Company of Illinois and the Indianapolis, Crawfordsville and Danville Railroad Company of Indiana did, on the 12th day of July, 1869, consolidate their stock and property and become one corporation, called and known as the Indianapolis, Bloomington and Western Railway Company, and that such last-mentioned company became thereby vested with all the rights, franchises, powers, and prop-

erty, and subject to all the debts, liabilities, and obligations of
323 the two original companies, out of which it was so by consolidation organized, as in bill alleged; and respondents admit that afterwards, on the 1st day of October, 1869, for the purpose in bill alleged, the said Indianapolis, Bloomington and Western Railway Company did execute and deliver to the Farmers' Loan and Trust Company of New York, as trustee, its certain trust deed or mortgage, conveying to said trust company all and singular the railway of the Indianapolis, Bloomington and Western Railway Company, extending from Indianapolis, Indiana, through Danville, Urbana, and Bloomington, to Pekin, in the State of Illinois, being about two hundred and ten miles in length, including in said mortgage all the franchises, equipments, and other property, as in bill alleged, belonging to said last-mentioned railway company, wherever situated, and that such deed was executed to secure the payment of five thousand bonds of the denomination of one thousand dollars each, numbered from one to five thousand, inclusive, bearing date October 1st, 1869, payable, principal and interest, at the
324 place, in the manner, with the rate of interest, and at the time in the bill alleged, and that such bonds had attached interest coupons, payable semi-annually, in New York, on the first days of April and October in each year, and that said trust deed was duly recorded in Indiana and Illinois, in the several counties through which said road was located, as in bill alleged, and that said Indianapolis, Bloomington and Western Railway Company did thereupon retire the one and a half million dollars of bonds so before issued by the said original company, the said Indianapolis, Crawfordsville and Danville Railroad Company, by exchanging therefor an equal amount so secured by the said indenture by it executed, of date 1st day of October, 1869, in bill alleged.

These respondents cannot admit that the said Indianapolis, Bloomington and Western Railway Company issued and put in circulation, in the usual course of business, for value, a further amount of one and one-half million dollars of said last issue of bonds, as in bill alleged, and call for proof. They admit that the two million dollars of the
325 Danville, Urbana, Bloomington and Pekin Railroad Company bonds, so issued as in bill alleged, have never been surrendered or redeemed, and aver that the two million dollars of bonds of said consolidated company, so issued to be exchanged for the two million dollarr of bonds of the said Danville, Urbana, Bloomington and Pekin Railroad Company, and for no other purpose, have not been held and kept sacred by said consolidated company, as they should have been, but have been put of their hands by hypothecation and otherwise in a manner wholly foreign to the design for which they were issued.

Respondents cannot admit that they constitute no part of the liabilities of said company, and call for their production here now to the court, as evidence of such allegation' as appear in bill with reference to their condition.

Respondents admit that the said Indianapolis, Bloomington and Western Railway Company, on the first day of October, 1870, did execute and deliver unto Wm. Dennison and Benjamin E. Smith, as
326 trustees, a certain other mortgage on its entire railway from Indianapolis, Indian, to Pekin, Illinois, including therein all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used or connected with the operation of said road, including all lands, reservations, and reversions of every nature and kind whatsoever, including all the property between said ter-

minal points which the said railway then had or might thereafter acquire. That such conveyance was in trust to secure the payment of one and one-half million dollars of bonds, called second mortgage bonds, then about to be issued by said corporation for the purpose of borrowing money for the equipment, operating, and use of said railway, and that said mortgage was duly recorded, in conformity with the law, in the recorder's offices in all the counties through which the said railroad runs in the States of Indiana and Illinois, and that in pursuance thereof the said railway company did proceed to utter and put into circulation, in the usual course of business and for
327 value, its so-called second mortgage bonds, in the aggregate mounting to one and one-half million dollars, dated on the 1st day of October, 1870, payable twenty years from date with interest at the rate of eight per cent. per annum, evidenced by interest coupons which were payable for each year on the first of January and July; and that such bonds for one and one-half million dollars still remain outstanding in the hands of divers persons and corporations, and are unpaid and constitute an indebtedness against said railway company to the full amount of the principal and interest now unpaid. And respondents aver that they are the owners of a large number of said last-mentioned bonds, and that they file their answer on behalf of themselves as such owners and all other persons and corporations owning the same. That such owners are numerous and not within the jurisdiction of the process of this court, and many of them unknown to these respondents; and that these respondents hold powers of attorney from a majority in interest of such bondholders, authorizing them to protect their interests in that behalf.

328 And these respondents aver that default was made by the said Indianapolis, Bloomington and Western Railway Company in the payment of the interest due on said last-mentioned bonds on the 1st day of July, 1874, and that demand was made for payment of such interest in New York when payable, and that the same was not paid, nor any part thereof, and that by reason of such non-payment of interest at that time, and the lapse of time since then, such interest still remaining unpaid without the consent of the holders of such bonds, said principal sum of said bonds has, by reason of the premises and in conformity with the conditions in said trust deed recited, become and is now due and payable, together with the six months' interest so due and unpaid on the 1st day of July, 1874, and the interest since maturing, default of payment having also been made of the six months' interest on said bonds due and payable January 1st, 1875.

These respondents cannot admit or deny the allegations of bill in relation to the existence of the corporation known as the Havana, Mason City, Lincoln and Eastern Railway Company, nor as to the line
329 of road in process of construction from Decatur, Illinois, to Champaign City, Illinois, nor as to that part of road in process of construction from Champaign aforesaid westwardly to a point on the Mississippi River, nor as to the conveyance by the Havana, Mason City and Eastern Railway Company to the Indianapolis, Bloomington and Western Railway Company of all the line of railroad belonging to said Havana, Mason City and Eastern Railway Company. Nor can respondents admit or deny that on the 28th day of June, 1872, the Indianapolis, Bloomington and Western Railway Company conveyed to William Dennison and Robert Turner, in the manner in bill alleged, that portion of railway described in bill from Champaign, in Champaign County, Illinois, thence to the town of White Heath, in Piatt County, Clinton, in

De Witt County, Lincoln, in Logan County, and Mason City and Havana, in Mason County, westwardly to the Mississippi River, and also from the said town of White Heath, via Monticello, Piatt County, to the city of Decatur, in Macon County, in length about two hundred
330 and fifteen miles, as in bill alleged; nor can they admit or deny that such conveyance was made for the purposes stated in bill, nor do they know anything about the recording of said deed of trust except as informed by bill. These respondents deny that the Indianapolis, Bloomington and Western Railway Company are indebted on the account aforesaid in the said sum of five and one half million dollars, as alleged in bill, and deny that said bonds have been disposed of by sale or hypothecation in good faith for the benefit of said railway company.

These respondents deny that the principal office of the Indianapolis, Bloomington and Western Railway Company has been at Urbana since its formation by consolidation. They do not deny that elections have been held there; but they aver that the principal office of said railway company has been in Indianapolis, Indiana, most of the time since such consolidation, and that the principal officer' of said company in the management of said road keep their offices and the books and records of said company at Indianapolis, Indiana, that being the eastern terminus of said railway. These respondents deny that the principal office of said railway company has been at Urbana since the 8th day of August,
331 1870. They admit that large additions have been made to the rolling stock, outfit, and equipment of said road since the 8th day of August, 1870, the value of which is unknown to respondents.

These respondents deny that by reason of the provisions of the constitution of Illinois and the laws thereunder enacted, that the said one million five hundred thousand dollars' worth of personal property of said railway company in bill mentioned, or any other personal property of said company that was intended to or could, by the terms and provisions of their said mortgage, be subject thereto, is exempt from the lien and operation thereof. Respondents deny that said railway company now have one and one-half million dollars' worth of personal property acquired since the 8th of August, 1870.

Respondents cannot admit or deny that all the other mortgages except theirs are a lien on such personal property, but they aver that by the terms of their mortgage and by reason of the premises, the said second mortgage is a lien on all the personal property of the said Indianapolis, Bloomington and Western Railway Company, wheresoever found along its line of road, whether in Illinois or Indiana. These respondents deny that the said Indianapolis, Bloomington
332 and Western Railway Company is indebted bona fide in any such sums as two and one-half million dollars floating debt of as alleged in bill, for the purposes and on the account in bill alleged, and deny that said railway company is liable in equity for any such sum.

Respondents do not deny that some of the bonds of said company have been hypothecated with some persons nominally the creditors of said railway company, but aver that the money received, if any, under and by virtue of said hypothecation, was not obtained for, nor was it appropriated to, the use of said railway company's liabilities bona fide, and that the persons holding such bonds so hypothecated received the same well knowing this fact; and respondents call for full proof of such allegations of bill.

Respondents deny that the said railway company is without net earnings at present for the reason alleged, but aver that if the business of

said road had been prudently managed, that its income, if properly accounted for and applied by its officers legitimately, would have been, and would now be, adequate to the payment of its current ex-
333 penses, and would also have furnished a fund sufficient to keep down and pay the interest on its bonds as it matured from time to time.

These respondents do not deny that some suits have been instituted against said railway company, but allege that many of the claims in which they are instituted are fraudulent and void, and that Dennison and Smith, the trustees in the second mortgage, have winked at and encouraged such proceedings, which they might, by due diligence and fidelity to their trust, have avoided. These respondents deny that the Indianapolis, Bloomington and Western Railway Company did, on the 16th day of November, 1874, or at any other time, execute to Joseph T. Thomas a trust conveyance or mortgage upon the chattels and personal property to it belonging, as in bill alleged, and deny that the debts alleged in said bill and intended to be secured by said mortgage are bona fide, and deny that said railway company has the power to execute any such instrument in derogation of their rights or to effect their lien given thereon by the terms of the said second mortgage so before herein recited executed on said road and the property,
334 both real and personal, of said company. As to said pretended chattel mortgage, respondents further state that said Benjamin E. Smith, acting in collusion with the complainants in said bill, voluntarily and of his own motion, and without authority, executed said chattel mortgage to defraud the bond creditors of said company; that the same is fraudulent and void, and the pretended indebtedness schedule therewith is all either past due or of no validity, and was so when said mortgage was executed. The bonds which are secured by said second mortgage are held by respondent or by those in whose behalf they file this answer.

These respondents deny that said Indianapolis, Bloomington and Western Railway Company was unable, for the causes specified, to meet the interest on its several bonds, as in bill alleged, and aver that it did pay the interest on the bonds secured by the mortgage of October 1st, 1869, in October, 1873, and in April, 1874. Respondents deny that such railway company made default in the payment of the semi-annual interest due on the second mortgage bonds matur-
ing in January, 1874, but admit that such default was made
335 as to the payment of such interest due the 1st day of July, 1874. Respondents deny that default was made in the payment of interest on the bonds commonly called extension bonds in January and July, 1874, secured by mortgage of June 28th, 1872. Respondents deny that such interest remains unpaid, except as before admitted. Respondents admit that such interest as in fact remains unpaid so secured by mortgage is a lien thereunder.

These defendants know nothing of the liabilities of the Indianapolis, Bloomington and Western Railway Company to the complainants as alleged, and call for strict proof. They do not know how much said railway company owes complainants, if anything, and call for proof. They do not know on what accounts complainant advanced money to said railway company, if at all, and call for proof.

These respondents deny that complainants paid any part of the interest on bonds as alleged, and aver that if they furnished said railway company money to make such payments, and made the application thereof to such payments, that such payments, when so made, were

payments in fact by said company, and gave to complainants
336 no right whatever to be subrogated to the rights, privileges, and liens of the bona fide holders of such coupons to whom payments were made, as such payments absolutely discharged the liens in favor of such coupons, and they were canceled when paid.

These respondents here deny, for themselves and those for whom they answer, that the complainants made any payment of interest on the second mortgage bonds of said railway company under any arrangement with them, expressed or implied, by which they acquired any right to to be subrogated to their rights under said mortgage as holders of such bonds and coupons so secured thereby. These respondents deny that any such default in payment of interest on any of the mortgage bonds of said railway company has been made, except as to coupons secured by second mortgage, as to entitle the complainants to any such relief as they claim in the premises.

Respondents admit that *that* said railway line from Indianapolis, Indiana, to its various terminal points in the State of Illinois, is used as an entire line, and that the equipment', engines, cars, and material used in
337 the operation thereof are used indiscriminately over each and every part of said line. How long such plan has been followed respondents cannot state, and these respondents cannot say that any part of said equipment, &c., has ever been, by any special order or provision of said company, apportioned to any particular part of the line of said railway, except so far as this result may have been accomplished by it in the execution of the mortgages thereon before herein recited. These respondents deny that one million dollars of money arising from the sale of extension bonds was expended in the purchase of equipments and betterments for the main line of said road, as in bill alleged. As to the complications arising and likely to arise in the adjustment of the various equities in connection with the liabilities and obligations of said railway company, respondents can only say by way of answer that much of said complication, in their opinion, is imaginary and has its origin in the fertile conception of complainants.

These respondents, further answering, say that they do not understand that the complainants have any standing in this court by
338 which they may now invoke its power in their behalf as in bill prayed, as there has been no such defaults on the part of the said Indianapolis, Bloomington and Western Railway Company with reference to the bonds and mortgages in which they have an interest or with which they are connected so far as the bill in this case shows as to give them the right to seek now the relief sought by them in this behalf.

These respondents deny that any other person or persons have any liens on said railway or in its property, except by virtue of the trust deeds before herein recited given to secure the payment of bonded indebtedness issued in pursuance thereof in conformity therewith, and which may have been sold and negotiated in good faith for value in accordance with the purpose for which they were to be issued. And these respondents, further answering, for themselves and all other shaving like interest with them in the bonds of the said Indianapolis, Bloomington and Western Railway Company, commonly known as the second mortgage bonds, pray the court to fully protect their respective interests in this behalf; and they further say that they will, at
339 such times as this honorable court may require, furnish to it the names of owners of the one and one-half million dollars second mortgage bonds aforesaid, and exhibit their said power of attorney.

And all other matters and things in bill alleged not herein admitted or denied are hereby denied. And now having answered, they pray to be hence discharged.

WILEY & PARKER,
Att'ys for Ans'g Def't.

(Indorsed:) Filed May 17, 1875. Wm. H. Harrison, clerk.

340 *Cross-bill of Denny, Blossom, & Adriance.*

De Witt County circuit court, March term, 1875.

STATE OF ILLINOIS,
De Witt County, ss:

To the honorable Lyman Lacy, sole judge of said court in chancery sitting:

Humbly complaining, sheweth unto your honor, your orators, Thomas Denny, Josiah B. Blossom, and John P. Adriance, who sue herein in behalf of themselves and those whom they represent as attorneys in fact in this behalf and all other bondholders of like interest with them in the bonded indebtedness hereinafter described who may desire to become parties hereto and contribute to the expense of this suit: That heretofore, viz, at the December term, 1874, of this honorable court, there was filed therein by Malcomb C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George W. Turner, and Joseph S. Decker, as copartners under the firm name of Turner Brothers, a bill of complaint for the foreclosure of certain mortgages therein described, and for the appointment of a receiver attendant thereupon, against the Indianapolis, Bloomington and Western Railway Co.,
341 The Farmers' Loan and Trust Co., Wm. Dennison, Benj. E. Smith, Robert Turner, and Joseph T. Thomas; and orator further show unto your honor that they have, for themselves and other parties in like interest with them in one of the mortgages referred to in said bill of complaint, filed an answer thereto, in and by which said answer they admit many of the allegations of said bill and deny others, which said bill and answer are now here by orators referred to as though fully herein recited and set forth.

1st. And orator', further complaining, show unto your honor by their cross-bill that heretofore, to wit, on the 12th day of July, 1869, there was existing a railroad corporation created and organized under the general laws of the State of Indiana, called the Indiana Crawfordsville and Danville Railroad Co., which said railroad company was vested with the usual power conferred upon such corporations, and was authorized by its said power to locate, construct, and operate a line of railroad from Indianapolis, Marion County, Indiana, westwardly through the counties Hendricks, Boone, Montgomery, Fountain, and War-
342 ren, to the western boundary line of the State of Indiana (a copy of the articles of association of said railroad co. are hereto attached and made a part of this your orators' cross-bill, marked Exhibit A), and said railroad company was vested with full corporate power to borrow money and issue bonds secured by mortgage upon the said line of railroad, and its appurtenances and appendages, and that it had the power in pursuance of the laws of Indiana (which are now here to the court shown) to consolidate its stock and property with connecting lines of railroads lying in another State.

2nd. That prior to the 12th day of July, 1869, by virtue of an act of

the general assembly of the State of Illinois, approved February 28th, 1867, there was created and organized a corporation in the State of Illinois called the Danville, Urbana, Bloomington and Pekin Railroad Co., which said corporation by virtue of such enactment, which is now here to the court shown, was endowed with full corporate powers to locate, construct, and operate the line of railroad designated in such
343 charter from Pekin, in Tazewell County, Illinois, eastwardly through Bloomington, Mount Pleasant, Champaign, and Danville, to the eastern boundary line of the State of Illinois, and said corporation had power in conformity with law to consolidate its stock and property with those of any other connecting line of railroad in another State. Complainants refer to the laws of Illinois in this behalf.

3rd. That by articles of confederation duly entered into between said Danville, Urbana, Bloomington and Pekin Railroad Co., of Illinois and the Indianapolis, Crawfordsville and Danville Railroad Co. of Indiana, as aforesaid, whose lines of railroad as located formed a connecting line at the terminus of each at the State line between Illinois and Indiana, which bear date on the 12th day of July, 1869, and which were duly ratified by the boards of directors and the stockholders of each of said corporations (a copy of which said articles of consolidation, marked Exhibit B, are herewith filed and made part hereof), the two last-named corporations consolidated their stock and property and became
344 one corporation, called the Indianapolis, Bloomington and Western Railway Co., and in pursuance of such consolidation, and in conformity with the laws of Indiana and Illinois, such company became thereby vested with all and singular the property, estate, privileges, and franchises owned and enjoyed by the two original companies from and of which such new company was formed by consolidation as aforesaid.

4th. That afterwards, to wit, on the 1st day of Oct., 1870, the said Indianapolis, Bloomington and Western Railway Co. did, as thereto authorized by the powers in it vested, and under the order of the board of director' of said company, sign, seal, execute, acknowledge, and deliver its certain trust deed or mortgage conveying unto William Dennison and Benjamin E. Smith, of the city of Columbus, State of Ohio, as trustees, and to their successors and assigns all and singular its entire line of railway lying, being, and extending from its terminus in the city of Indianapolis, State of Indiana, through Crawfordsville, in said
345 last-mentioned , westward to the State of Illinois, and through Danville, Urbana, and Bloomington, in said State of Illinois, westward to Pekin, altogether being in length of railway track about two hundred and fourteen miles, about eighty-three miles thereof lying in the State of Indiana aforesaid, and about one hundred and thirty-one miles thereof in the State of Illinois, with all its franchises, equipments, buildings, fixture', machinery, goods, and chattels used in connection with the operation of said railroad, including all rents, reservations, and reversions of every value and kind whatever, including all the property between said terminal points which the said railway co. then had, owned, and possessed, or that it might thereafter acquire—the said conveyance being executed in trust and as security for the contemplated issue of bonds to the amount of one and one-half million dollars, called second mortgage bonds, intended by said corporation to be issued for the purpose of borrowing money for the equipment,
346 operation, and use of the said railway, which said indenture was thereupon duly recorded in the recorder's office, in the proper records of the counties in the States of Illinois and Indiana through which

said railway runs, as required by the statutes of said respective States, whereby orator claim that all the property of said consolidated company described in said mortgage or trust deed then possessed and subsequently acquired by said company is subject to the lien of said mortgage prior to the liens or claims of any of the other parties hereto or any other parties holding claims against said company. Complainants file herewith a copy of said mortgage, together with the acknowledgments thereon, marked Exhibit C, and make the same part hereof.

5th. That under the protection of the trust-deed described in the foregoing paragraph the said Indianapolis, Bloomington and Western Railway Company did proceed to utter and put into general circulation, in the usual course of business and for value, the so-called second
347 mortgage bonds, in the aggregate amounting to one and one-half million dollars, dated on the first day of Oct., 1870, payable twenty years from date, bearing interest at the rate of eight (8) per cent. per annum, being for one thousand dollars each, and numbered consecutively from one to fifteen hundred, inclusive, having thereto attached interest warrants or coupons of forty dollars each, payable on the first days of January and July of each and every year after the date thereof (except on the first of January, 1871), principal and interest payable in the city New York, a copy of which said bonds except as to number, is hereto attached, marked Exhibit I, to which reference is hereby made, and that they, the orator, are the owner in their own right of a large number of said last-mentioned bonds, and that most of the other owners of said bonds are without the jurisdiction of this court and are too numerous to be made parties hereto with convenience, and that the greater part of said fifteen hundred thousand dollars so arising from the sale of such bonds was expended in
348 the purchase of rolling stock for said railway, and that the engines and rolling stock now used on said railway were purchased chiefly with such funds.

6th. That the paragraph numbered eight of said trust deed is in the words and figures following, viz: If default be made by the party of the first part in the payment of any half year's interest on any of said bonds, and the warrants or coupons for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupons or bond, then and thereupon the principal of all of said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and the said party of the second part may so declare the same and notify the party of the first part thereof, and upon the written request of the
349 holders of a majority of the said bonds then outstanding, shall proceed to collect both principal and interest of all such bonds outstanding, by foreclosure and sale of said property, or otherwise, as herein provided.

7th. That on the 1st day of July, 1874, default was made by the Indianapolis, Bloomington and Western Railway Co. in the payment of the entire amount of interest maturing on that day on the one and a half million second mortgage bonds so secured as in paragraph fourth hereof recited, and on the 3rd day of July, 1874, there were presented at the office of said railway co., in the city of New York, to the party then and there found in charge of said office, acting for said company, ten coupons, of forty dollars each, due July 1st, 1874, from such second mortgage bonds of said railway co., numbered 951, 952, 953, 954, 955, 956, 957, 958, 959, and 960, and payment demanded thereof, but such

payment was not made, and the party so presenting such coupons, and so demanding payment thereof, was then and there by clerk in attendance informed that there were no funds with which to pay the
350 same; that such default has continued for six months since such demand of payment without the consent of the holders of the coupons aforesaid; also, that there were presented at said office on the 31st day of August, 1874, to the clerk of said company then and there in charge of said office, one hundred and fifty-two other coupons calling for forty dollars each, due said 1st day of July, 1874, taken from said second mortgage bonds of said railway co., numbered as follows, viz:

501 to 530	inclusive,	574 to	578	inclusive.	
601 " 610	"	839 "	843	"	
856 " 860	"	886 "	899	"	
912		923 "	947	"	
951 to 965	"	1201 "	1225	"	
1234 " 1250	"				

And payment of the same was then and there demanded, but such payment was then and there refused by the party so in charge of said office, and that such default has also continued for six months since such demand and refused without the consent of the holders or
351 owners of the coupons aforesaid, and that by reason thereof and of the premises the principal of each of said fifteen hundred second mortgage bonds has become due and payable, and that the same is now due and remains wholly unpaid, together with the interest thereon, since the 1st day of January, 1844; that said company failed to designate, by advertisement or otherwise, any place in said city of New York for the payment of said coupons so falling due on the 1st day of July, 1874, for the reason that the co. had no means to pay the same.

8th. Orators further show unto your honor that since the execution of the trust deed mentioned in paragraph four hereof, Benjamin E. Smith, one of the trustees in said deed mentioned, was, on or about the 20th day of February, 1871, elected president of the Indianapolis, Bloomington and Western Railway Co., and has acted as such thence hitherto, and that since the date of the execution of such deed the said Benj. E. Smith and the said Wm. Dennison, both being and acting as officers and directors of said company, have become largely interested
352 in contracts with said railway co. for the construction of a large portion of said company's line of road as contractors therefor. That they are both interested in the floating debt due or claimed to be due from said railway co., said Benj. E. Smith and Wm. Dennison being partners and members of the firm of Griggs, Smith & Co., contractors in the construction of said road, who claim that the said railway co. is indebted to them therefor in the sum of five hundred and fifty thousand dollars, and that said Smith and Dennison are interested in the stock issued by said railway co. by virtue of the contracts for the construction of said road as aforesaid in which they were interested, said Smith so being president and said Dennison being a director and member of executive committee of said railway company at the time of execution of said contracts and issuance of such stock, and that the said Smith as such president, and the said Dennison as such director, and the said Archibald Turner as a member of the executive committee have,
353 with other directors of said railway co., been further connected with and committed to the mismanagement of the business of said railway co., in this, that in a pretended compliance with the laws of the State of Illinois, requiring official annual reports under oath by certain officers of railway companies, said Smith and Dennison and

Turner procured or permitted false returns to be made to the board of railroad commissioners of the said State of Illinois, wherein and whereby it was claimed and averred under oath that the floating debt of said railway co. was on the 30th June, 1871, but $604,076, whereas the balance sheet of the condition of said company for that date shows the floating debt of said company to be $624,580, that said sworn statement for 1872; filed as aforesaid, averred the floating debt of said railway co. on the 30th of June of said last-named year to have been one hundred and seventy-seven thousand two hundred and seventy-six dollars, when according to said auditor's balance sheet, the floating debt of
354 said company then amounted to nine hundred seventy-five thousand five hundred and forty dollars.

That said official report for the year 1873, as exhibited by said company to said board, put the floating debt on the 30th day of June, of that year, at the seventy-two thousand four hundred and twenty-six dollars, whereas said auditor's balance sheet for that date shows the same to have been one million four hundred and seventy thousand two hundred and twenty-six dollars. That said official report and statement for the year 1874, exhibited by said co. to said board, stated the floating debt of said company, on the 30th day of June of said last-named year to have been three hundred and forty-seven thousand six hundred and fifty-five dollars, whereas the said auditor's balance sheet for said date showed the floating debt of said company to have then been three million one hundred and seventy-seven thousand five hundred and eighty-seven dollars; also equally false statements touching the ownership of the equipment and other assets of said co, and the nature thereof; also as
355 to the net earnings of the co., and that said official reports were annually published and distributed by said board of commissioners, and this publicity given thereto, whereby false impressions were created in the minds of the public as to the financial status of said company, and large sums of money borrowed and materials purchased on a credit on the faith of said reports, creating thereby a very burdensome floating indebtedness against said co., which now subsists, and for the payment of a great portion thereof, viz, about half a million dollars, the said Smith is security in his individual capacity, and hence is personally bound for the payment of the same, by reason whereof he has lent his entire influence and bent his energies as president and director of said co. to subserve the interests of the floating-debt creditors and secure the adjustment of said co., to the prejudice of the priorities and rights of the bond creditors, and in pursuance of that determination said Smith, as president of said co., did, on or about the 16th day of November, 1874, fraudulently, and without the authority or even knowl-
356 edge of the board of directors of said co. (except said Wm. Dennison, C. R. Griggs, and Archibald Turner, who were and still are largely interested in the floating debt of said co., and hence in sympathy with said Smith in his endeavors to provide for the floating debt to the prejudice of the bond creditors of the company) attempted to convey and transfer to one Joseph T. Thomas, of Philadelphia, Pa., by chattel mortgage all the rolling stock, machinery, and chattel property of said railway co., which comprised the property upon which a prior lien was given by the trust deed mentioned in paragraph four hereof to secure the bonds owned and held by orators and their associates. Orators aver that said chattel mortgage was executed by said Smith without authority in law or of the directors of said co.

That the grantee therein named, Joseph T. Thomas, was not advised of said conveyance at the time the same was made, and has never accepted

the trust therein attempted to be thrust upon him without his knowledge or consent. That said chattel mortgage was not delivered
357 to said Thomas prior to the record thereof, nor to any one authorized to act for him. In fine, that said chattel mortgage is a "trumped up" conveyance, and attempted incumbrance upon the chattel property of said co. by said Smith and other directors and creditors of said co. in collusion with said complainants in said the original bill, predicated upon the technicalities of the law in order to defeat what was previously concluded to have been the prior right and equities of and to defraud the said second mortgage bondholders that a great portion of the supposed indebtedness of said co. mentioned in the schedule of debts attached to said chattel mortgage, *and* not bona fide claims against said co., but are assumed claims of said Turners, Smith, and Griggs and Dennison, against said railway co., procured by them as directors, to be made or executed to themselves as individuals, severally or jointly, and that said claims are without any legal or sufficient consideration, and are void in law and contrary to equity.

That apart from the personal last aforesaid, none of the creditors of said co. named in the schedule attached to said chattel
358 mortgage was cognizant of the execution of the same, and all the claims attempted to be secured thereby that are valid were past due at the time said mortgage was attempted to be executed. That said pretended mortgage is void for uncertainty. Your orators further aver and charge the fact to be that said Benj. E. Smith and Wm. Dennison have heretofore been and still are large stockholders in the Western Car Co., a corporation, the business of which is to procure and lease out railway rolling stock to railroad companies; that they are also directors and officers of said car company, and were so on the day of 1873, at which time, being also then and there directors of said defendants railway co., procured to be leased to said railway co. by said car company a large number, to wit, about twelve hundred freight cars, on terms that were and still are onerous and prejudicial to said railway co., and such that said last-named company has been unable to comply with, and hence said car co. has large claims against said
359 railway co. which are unconscionable and unjust, but are attempted to be secured by said chattel mortgage in preference to the claims of your orators.

That said officers and directors permitted and procured similar false and fraudulent reports of the condition and affairs of said co. to be made to the authorized officers of the State of Indiana, thus contributing to the final bankruptcy of said co. as aforesaid. Said Smith as president of said co. also issued printed circulars in the fall of 1874, in which the earnings and financial status of said company were grossly misrepresented; and from the 1st day of July, 1874, to the date of the appointment of the receiver herein, said Smith, to relieve himself from obligations which he had undertaken, diverted about two hundred thousand dollars of the earnings of said co. to the payment of floating debt creditors, whereas in equity and justice said funds should have been first used in the payment of the wages of the employees and supply bills of the co. accruing during that period, and next to the pay-
360 ment of the interest coupons on the bonded indebtedness. Said Smith wholly ignored the first priorities of these items of indebtedness of the co., and absorbed almost the entire earnings of the co. during said period in the payment of the outstanding floating debts of the co. in which he was for the most part individually interested.

10th. And that the paragraph of said deed of trust marked "ten" in copy, herewith filed, is in the words and figures following: "In case of the resignation or inability to act of the trustees aforesaid, or either of them, the board of directors may appoint a successor or successors, and failing so to appoint, any court of competent jurisdiction in either of the said States may appoint a trustee or trustees to fill such vacancy or vacancies on the application of the holders of one-fifth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee or trustees so appointed with all the interest, estate, power, and authority
361 in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein."

11th. That by reason of the various acts, complications, collusions, &c., recited in the eighth paragraph hereof, which said Smith and Dennison have perpetrated, and with which they have been connected, the majority in interest of the owners of the bonds secured by said second mortgage so executed to said B. E. Smith and Wm. Dennison as such trustees, have become distrustful of them, believing that their interests are such and so antagonistic that they are incompetent and unable to discharge their duties as such trustees with fidelity to the interests of such bondholders; and entertaining such convictions, a majority in interest of such bondholders have heretofore determined to take steps to have said Smith and Dennison removed as such trustee, believing that the premises justified and demanded such course, and that the
362 same might be taken in harmony substantially with the provisions of said paragraph "ten" of said second mortgage, and to cause orators Thomas Denny and Josiah B. Blossom to be appointed as their successors as such trustees, and for this purpose they have heretofore executed and delivered to orators herein powers of attorney, of which a copy, except the supplying dates, numbers, amounts, and signatures, is hereto attached, marked Exhibit E, and asked to be taken as part of this cross-bill.

12th. That after the execution to them of said power of attorney, authorizing them to procure the resignation of said Smith and Dennison as such trustees of said second mortgage, they made application to them, requesting their resignation, but that they have hitherto failed to comply with such reasonable request.

13th. That after the making of the request recited in the twelfth paragraph hereof, at a called meeting of the board of directors of the said Indianapolis, Bloomington and Western Railway Co., held at the principal office of said co. at Indianapolis, in the State of Indiana,
363 on the 9th day of December, 1874, Benj. E. Smith, the president of said co., and a quorum of said board of directors being present, orators, by Josiah B. Blossom, one of their number, exhibited to said president and board of directors so convened, the authority under which they were acting and proposing to act for a majority of the bondholders of the said second mortgage bonds, and demanded and requested of such board that said railway co. should immediately proceed to appoint orators Thomas Denny and Josiah B. Blossom as trustees of said second mortgage in accordance with the wishes expressed in such powers of attorney so to orators executed, and in conformity substantially with the provisions of paragraph ten of said second mortgage, as marked in copy herewith filed, and that such board of directors refused to take action on the said application of your orator.

14th. That the paragraph of said trust deed, marked fifth, is in words and figures following:

"In case default shall be made in the payment of any interest
364 of the aforesaid bonds issued, or to be issued, according to the terms of the coupons thereto annexed, or of the provisions hereof, or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due without the consent of the holder of such bonds on which such default shall occur, the said party of the first part covenants and agrees to and with the party of the second part and their successors and assigns that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on the demand of the said trustee or trustees for the time being, shall and will surrender to them, or to their agents, the actual possession of the herein granted and devised railway and premises, together with all the books, records, papers, accounts, and money of said co., and all management and control thereof, and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from
365 the incomes and profits thereof, and if said property shall, after such taking possession thereof, be sold, then from the sale thereof, or such expenses may be paid from the sale of any personal property, as the said trustees may deem proper, and that said party of the second part and their successors, having taken such possession may manage, operate, and control said road, and property, and all of its affairs, and appoint all needful agents and employees for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payments of the said interest so in default according to the true intent and terms of the said bonds and the coupons annexed, and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same, first paying all expenses of such possession and management, and all taxes and assessments, charges, and prior liens on said property, and a just com-
366 pensation for their own services as such trustees, but in any and all cases of such taking of possession by said party of the second part, and paying up any such default and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money, and accounts into the possession of the party of the first part, provided that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least the one-half of all the said issue of bonds which shall then be unpaid and outstanding to make such demand and to take such possession of said road and property."

15th. That after the foregoing request, so made by them on the said Smith and Dennison as such trustees to resign, and, as recited in paragraph twelve hereof, and within six months after the default in the payment of interest on the said second mortgage bonds so maturing July 1st, 1874, and the request of said company to make payment thereof,
367 orators made written request to officers and directors of the Indianapolis, Bloomington and Western Railway Co. to deliver over to orators Blossom and Denny, as trustees so selected by the bondholders as aforesaid, the actual possession of the railway, as provided in paragraph number five in said second mortgage, which request was not complied with, and that after such request and at the meeting of said board of directors, so held in Indianapolis on the 9th day of December, 1874, they caused to be offered thereat the following resolution, viz.:

"Resolved, That the plan and action of the protection committee of the second mortgage bondholders, as indicated and set forth in their circular issued in New York November 12th, 1874, and indorsed by the

first mortgage bondholders' committee (a copy of which is hereto attached) be, and the same is hereby, ratified and approved; and that in the event of the relinquishment of the jurisdiction of the courts over the road and property of the company the plan so proposed by
368 said committee be adopted in the future management of the road of this company until the arrearages of its bonded indebtedness shall be fully discharged."

And that said board then and there refused to concur therein. A copy of the circular referred to in said resolution hereto attached and marked Exhibit F, and asked to be taken as part hereof.

16th. That the paragraph of said trust deed marked second is in words and figures following, viz:

"That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing or to be acquired by said party of the first part appurtenant to said railway which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as lawfully required by the party of the second part or their successors or assigns holding the above granted trust, do such acts and make
369 such other and further conveyance in law as such party of the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust."

17th. Your orators further represent that previous to such meeting of December 9th, 1874, they had been advised by counsel learned in the law that said Indianapolis, Bloomington and Western Railway Co. should, for the better assuring and confirming the title and powers of the party of the second part in said second mortgage to the premises and property therein and thereby conveyed, execute and deliver, for the benefit of the parties in interest, a chattel mortgage on the personal property, rolling stock, and equipments of said railway co., in conformity with paragraph numbered two of said mortgage last above recited, and that at such meeting of said board of directors so held and convened at Indianapolis, Indiana, on the 9th day of December, 1874,
370 they demanded and requested of such board that they by way of a further conveyance and assurance in law, execute such chattel mortgage, which reasonable request they, the said board of directors, then and there refused to comply with, and still do refuse.

18th. That all of the property of the Indianapolis, Bloomington and Western Railway Co. of every description and character is covered and incumbered by the several mortgages in the original and in this cross-bill recited; according to their respective provisions, rights and priorities, and that such property is inadequate in value to the payment of such mortgage, and that the said Indianapolis, Bloomington and Western Railrway Co. is wholly insolvent.

19th. Wherefore, in consideration of the premises, orators being without remedy at law, pray that the said Malcolmb C. Turner, James Turner, Thomas C. Turner, Robert Turner, Archibald Turner, George W. Turner, and Joseph S. Decker, the complainants in original bill, The Indianapolis, Bloomington and Western Railway Co., The Far-
371 mers' Loan and Trust Co., Wm. Dennison, Benj. E. Smith, Robert Turner, and Joseph T. Thomas may be made parties defendant hereto, and that they be required to answer the allegation hereof without oath, fully as though specially interrogated.

20th. That by reason of the premises, the trust, relation of and estate, the said Smith and Dennison as trustees under said second mortgage, cease and be determined by decree of this honorable court, and that orators, Thomas Denny, and Josiah B. Blossom, in accordance with the expressed wish of a majority in interest of said second mortgage bondholders, be substituted as trustees to the rights, powers, duties, and responsibilities of said Smith and Dennison, and be let into the possession of said property.

21st. That the said deed of trust or mortgage mentioned in paragraph four hereof may be held and regarded as a subsisting and prior lien upon all the property of said railway co. described in said mortgage without the jurisdiction of this court, and that an account
372 be taken of the amount due to orators and other holders of such second mortgage bonds to ascertain the amount due them on the principal and interest of such bonds, and that the defendant, the Indianapolis, Bloomington and Western Railway Co., be decreed to pay the same within a short time to be fixed by this honorable court, together with the costs of this suit, and that in default thereof and of such payment by all other defendants herein, that the defendant and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof; that all the property appurtenances, effects, immunities, and franchises belonging to said railway co. may be sold subject only to whatever prior rights and equities the first mortgaged bondholders of said co. and the said mortgage bondholders of the Danville, Urbana, Bloomington and Pekin Railroad Co. may by the determination of
373 this court have in said property, and that out of the proceeds of such sale the costs of this proceeding, including reasonable attorney's fees to be fixed and allowed by the court, first be discharged and that the residue be paid over to the legal holders of said second mortgage bonds pro rata, if the remainder aforesaid should prove insufficient to pay the same in full.

22nd. That pending the litigation of the respective rights of all parties in interest, a receiver be appointed according to the course and practice of this honorable court (with usual powers in like cases) of all the property of said railway co. within the jurisdiction of this court.

23rd. That an injunction issue restraining defendants from interfering with, selling, or disposing of or levying upon, or attempting to levy upon or sell by judicial proceeding or otherwise, any of the said property or effects of said railway co. so secured and subject it to such second mortgage.

24th. That subpœna issue from this court against the said
374 Farmers' Loan and Trust Co., Wm. Dennison, Benj. E. Smith, Robert Turner, and Joseph T. Thomas, the complainants in original bill, and the said Indianapolis, Bloomington and Western Co., being now in court in this cause, and as to persons who are proper parties in this cause and are without the jurisdiction of this court, that process may issue to bring them into court if they should come within its jurisdiction, and that such proceeding may be had in regard to such parties defendant as will bring them into court according to the usual chancery practice, and that you grant unto orators all other pertinent relief, and they will ever pray, &c.

WILEY AND PARKER,
Sol's for Complainants.

375 *Answer of B. E. Smith to Blossom & Adriance X-bill.*

To the August term, A. D. 1875, in the circuit court.

STATE OF ILLINOIS,
De Witt County:

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al.

THOMAS DENNY ET AL.
vs.
MALCOLM C. TURNER. } Cross-bill.

The separate answer of Benjamin E. Smith to the cross-bill filed in said cause by Thomas Denny et al. against Malcolm C. Turner et al., filed in the above cause.

This respondent, without waiving any rights of exception to said cross-bill, by reason of its numerous errors, for answer unto so much thereof as he is advised it is proper for him to answer, says:

First. Respondent admits that on the 12th day of July, 1869, The Indianapolis, Crawfordsville & Danville Railroad Co. was in existence and vested with the usual powers conferred upon such cor-
376 porations, and was authorized to locate, build, and operate a line of railroad from Indianapolis, Indiana, northwardly, as in said cross-bill stated, to the western boundary of the State of Indiana, and that said company was vested with corporate powers to borrow money and issue bonds and secure the same by mortgage upon its railroad appurtenances and property; and further, that said railroad co. had power to consolidate its stock and property with connecting lines lying in other States, according to the laws of Indiana.

Second. Respondent further admits that prior to the 12th day of July, 1869, by virtue of an act of the general assembly of the State of Illinois, approved Febr'y 28, 1869, there was created and organized a corporation in the State of Illinois, called the Danville, Urbana, Bloomington and Pekin Railroad Co., which said corporation, by virtue of the said act, was endowed with the full corporate powers to locate, build, and operate a line of railroad from Pekin, in Tazewell
377 County, Illinois, eastwardly through Bloomington and the other places mentioned in said cross-bill *mentioned in said cross-bill*, to the eastern boundary line of the State of Illinois; and further, that said last-mentioned railroad co. had the right and power to consolidate its stock and property with any other connecting line of railroad in any other States in accordance with the laws of the State of Illinois.

Third. Respondent further admits that, by articles of consolidation duly entered into between said Danville, Urbana, Bloomington & Pekin Railroad Co. of Illinois and the said Indianapolis, Crawfordsville & Danville Railroad Company of Indiana, said companies duly consolidated their stock and property under the laws of the States of Illinois and Indiana, and that the same were duly ratified by the respective boards of directors and stockholders, according to law, and that the said consolidated company was called and is still known as the Indianapolis, Bloomington & Western Railway Co., and that the said

last-mentioned co. thereby became vested with all the rights-
378 powers, and privileges of the two constituent companies forming such consolidated company.

Fourth. Respondent further admits that on the first day of October, 1870, the said Indianapolis, Bloomington and Western Railway Co. did sign, seal, and execute, acknowledge, and deliver a certain trust deed or mortgage, conveying unto Wm. Denison and Benj. E. Smith, of the city of Columbus, in the State of Ohio, and to their successors and assigns, all and singular the railway and railway property of the said Indianapolis, Bloomington & Western Railroad Co., as set forth in the said cross bill, and that the said trust deed was executed for the purpose of securing a certain bond, as in said cross-bill mentioned, and admit that the copy of mortgage filed with said cross-bill is a correct copy, and that the said Indianapolis, Bloomington and Western Railway Co. did execute and deliver the original of the said Exhibit C filed with said cross-bill.

379 Fifth. Respondent further admits that the said Indianapolis, Bloomington and Western Railway Company did proceed to utter and put into circulation, in the usual course of business, for value, the second mortgage bonds, in the aggregate amounting to about a million and a half of dollars, bearing date October 1st, 1870, payable twenty years after date, with interest at the rate of (8) eight per cent. per annum, said bonds being of one thousand dollars each, and numbered from one to fifteen hundred, inclusive, having thereto attached interest warrants or coupons of forty dollars each, payable on the first days of January and July of each and every year, except the first of January, 1871, principal and interest, in the city of New York; and further, that the copy of said bond filed as Exhibit D in said cross bill is a correct copy of the original bond. But whether the said orators in said cross-bill are the owners in their own right of a large amount of said last-mentioned bonds this respondent is not advised, and
380 therefore neither admits or denies. Neither is respondent advised as to whether the owners of said bonds are without the jurisdiction of this court, nor whether too numerous to be made parties to said cross-bill with convenience; neither is respondent advised as to whether the proceeds of said fifteen hundred bonds were chiefly expended in the purchase of rolling stock for said railway or not.

Sixth. Respondent admits that the eighth paragraph of said deed of trust is as set forth in said cross-bill.

Seventh. Respondent admits that on the first day of July, 1874, default was made by the Indianapolis, Bloomington & Western Railway Co. in the payment of the interest maturing on that day on the said fifteen hundred second mortgage bonds *bonds*, but as to whether on the third day of July, 1874, said coupons were presented at the office of the Indianapolis, Bloomington & Western Railway Co. in the city of New York, or whether the said ten coupons dated July 1, 1874, numbered as in said cross-bill set forth, were presented and payment
381 demanded and refused, respondent is not advised, nor is respondent advised whether or not on the 31st day of August following any coupons were presented, as in said cross-bill mentioned, and payment refused.

Eighth. Respondent admits that since the execution of the trust deed mentioned in said cross-bill tha' he (this respondent) on or about the 20th day of February, 1871, was elected president of the Indianapolis, Bloomington & Western Railway Co., and has acted in that capacity from that time until the present, and that since the date of the

execution of said trust deed this respondent and one Wm. Denison have been officers and directors of the said Indianapolis, Bloomington & Western Railway Company. But this respondent denies that they became largely interested in contracts with the Indianapolis, Bloomington & Western Railway Co. for the construction of a large portion of said company's line of road as contractors thereof, except as fol-
382 lows: Respondent admits that he is a member of Griggs, Smith & Co., but denies that said firm have made or had any contract with the Indianapolis, Bloomington & Western Railway Co. for the construction of any part of its railway, except that said railway co. by its purchase of the property and franchises of the Havana, Mason City, Lincoln & Eastern Railway Co., a consolidated company composed of the Havana, Mason City, Lincoln and Eastern Railway Co. and the Monticello Railway Co., which purchase was made on 28th day of June, 1872, and assumed the obligations of said consolidated company in contracts before that time made by said Monticello Railroad Co. on the 17th day of June, 1871, with C. R. Griggs & Co., of which this respondent was a member, for the construction, of its railroad, and by said Havana, Mason City, Lincoln and Eastern Railway Co. on the 10th day of October, 1871, with Griggs, Smith & Co., of which firm this respondent was a member, for the construction of its railroad, but respondent says that both of said contracts were canceled by the mutual consent of said Indianapolis, Bloomington and Western
383 Railway Co. and said C. R. Griggs & Co., and said Griggs, Smith & Co., respectively, on the 23rd day of December, 1873, and respondent says that neither of said firms has now nor has had any contract with said Indianapolis, Bloomington and Western Railway Co. for the construction of any of its railway, or for any other purpose, since the 23rd day of December, 1873. Respondent admits, however, that said Indianapolis, Bloomington & Western Railway Co. is largely indebted to this respondent, and that this respondent is interested in the stock of the said Indianapolis, Bloomington & Western Railway Co., the same having been issued to him for value, and not by reason of any office which this respondent held in the said company.

Ninth. Respondent further says that each and every allegation of said cross-bill charging or imputing to him knowledge or approval in any form whatever of any false statements or returns made by or behalf of said Indianapolis, Bloomington & Western Railway Co.
384 to the railroad commissioners or other officers of the State of Illinois or of Indiana is untrue; and, further, that he has no knowledge nor ever heard of any false statements or false returns of the condition of the affairs of said company having been made by or on behalf of said company or by any of its officers to said commissioners or other officers of either of the said States, or to any person or persons whomsoever, except as informed by said cross-bill. And respondent has no recollection of ever having been consulted by any officer of the said railway co., or by any other person, in respect to any statement or returns to be made of the financial condition of said company to railroad commissioners or other officers of either the States of Illinois or Indiana, or to any person or persons whomsoever, or of ever seeing any such false or fraudulent statement or return as set forth in the said cross-bill, and whether the floating debt was returned to any officers as set forth in the said cross-bill this respondent is not advised, and as to all that part of said
385 cross-bill charging such returns, and that the same were untrue, this respondent is not advised. Respondent further says that no false statement was made touching the ownership, equipment, and other

assets of said co. Neither was any false statement made with regard to the nature thereof, nor as to the net earnings of the company. Respondent also denies that large sums of money were borrowed and materials purchased on a credit on the faith of any reports mentioned in said cross-bill.

Respondent admits that he has been security for the Indianapolis, Bloomington & Western Railway Co.; that he has endorsed large amounts of its paper, but cannot *a present* at present say to what amount he is liable, and neither admits nor denies that portion of said cross-bill in which the amount is charged. But denies that he has ever bent his energies as president and director of said company to subserve the interest of the floating-debt creditors and securing the
386 adjustment of the floating debt of said company to the prejudice of the priorities and rights of the bond creditors, and respondent denies that he, on or about the 16th day of November, 1874, fraudulently, and without the authority or knowledge of the board of directors of said co., attempted to convey & transfer to one Joseph T. Thomas, of Philadelphia, Penn., by chattel mortgage all the rolling stock, machinery, and chattel stock of said railway co, but admits that such mortgage was made; and further says that he was duly authorized to execute and deliver the same, but denies that said mortgage, made to secure the second bonds, did cover the property mentioned in the said last-mentioned chattel mortgage.

And, further, respondent charges that said Joseph T. Thomas was advised of said conveyance at the time the same was made, and he accepted the trust therein, and that said chattel mortgage was delivered to said Thomas or to his authorized agent prior to the record
387 thereof; and denies that such chattel mortgage is "trumped up" conveyance and attempted encumbrance upon the chattel property of this company by this respondent and other directors mentioned and creditors acting in collusion in order to defeat what was previously conceded to have been the prior rights and equities of the second mortgage bondholders.

Respondent denies that a great portion or that any portion of the indebtedness of said co. mentioned in the schedule of debts attached to said second mortgage is not of bona fide claims against said co., but charges that each and every claim therein mentioned was at the time the same was put in said schedule a bona fide account and claim unpaid against the said Indianapolis, Bloomington and Western Railway Co., and that said claims are all based upon a legal and sufficient consideration, and are good and valid in law and in accordance with equity.

Respondent denies that only the persons mentioned in said
388 cross-bill were cognizant of the fact that said chattel mortgage was to be made, or of the execution thereof, and that all of such claims were valid in law, and that respondent, as the president of said railway co., had a right to secure the same.

Respondent admits that he and the said Wm. Denison have heretofore been and still are stockholders in the Western Car Company, a corporation, the business of which is to procure and lease out rolling stock to railroad companies, and that they are directors and officers of said Western Car Co., and were so on the day , 1873; and that at the same time they were directors of the said Indianapolis, Bloomington and Western Railway Co.; and at that time this respondent leased of said Western Car Co. (he acting as president of the Indianapolis, Bloomington and Western Railway Co.) a large number of cars, to wit, about twelve hundred freight cars, but denies that the terms

thereof were onerous or prejudicial to the railway co., and charges
389 that the same were rented at as reasonable a rate as it was then possible to rent cars. But respondent admits that the said railway co. has been unable to comply with its contract with said car company, and has failed to pay the rent according to said lease and has so failed, not because the said rental was unreasonable, but simply because the said Indianapolis, Bloomington & Western Railway Co. has not had the means wherewith to pay the same, and is now largely indebted to said Western Car Co.

Respondent denies that officers and directors of the Indianapolis, Bloomington and Western Railway Co. permitted and procured false and fraudulent reports of the condition and affairs of said company to be made to the authorized officers of the State of Indiana. Respondent admits that he issued printed circulars in the fall of 1874, but denies that the financial status of said Indianapolis, Bloomington & Western Railway Co. was greatly misrepresented or that the earnings of the same were misrepresented, but charges that the statements in
390 said pamphlet contained were true.

Respondent denies that in order to relieve himself from obligations which he had undertaken that he directed about two hundred thousand dollars of the earnings of said railway co. to the payment of floating debts, whereas in equity and justice said funds should have been first applied to the payment of the wages of employees and supply bills of the company accruing during that period. Respondent denies that he ignored the priorities of the said complainants in said cross-bill, and denies that he absorbed almost the entire earnings of the company during such period in the payment of outstanding floating debts of the co. in which he was for the most part individually interested, but admits that he paid the debts of the co. to the extent that the earnings of the company permitted him to do; but that in the payment of such debts he acted in good faith.

Tenth. Respondent admits that the tenth paragraph of the said deed is correctly set out in the tenth paragraph of the said cross-bill.
391 Eleventh. This respondent is not informed whether the holders of said second mortgage bonds are distrustful of this respondent and the said Wm. Denison or not, nor whether they believe this respondent and the said Denison to be incompetent and unable to discharge the duties of trustees with fidelity to the interests of the said bondholders.

Nor is this respondent advised as to whether a majority of such bondholders determined to take steps to have this respondent and said Denison removed as such trustees; but admits that the said complainants in the said cross-bill have been endeavoring to intrude themselves into said office and become trustees in said bond, and that they are still endeavoring in some way to be elected or appointed to such position.

Twelfth. Respondent admits that the said Denny and Blossom have requested him to resign his said office as trustee, and allow one
392 of them to take his place, but that he has not yet acceded to said request for the following reason: The board of directors of the Indianapolis, Bloomington & Western Railway Co. refused to allow this respondent to resign his said trusteeship.

Thirteenth. Respondent admits that after making the request recited in the twelfth paragraph of such cross-bill at the called meeting of the board of directors of the Indianapolis, Bloomington and Western Railway Co., held at the office of said company at Indianapolis, on the 9th of December, 1874 this respondent and a majority of said *said* board

of directors being present, the complainants in said cross-bill exhibited to this respondent to the said board of directors the authority under which they were acting and proposing to act for the bondholders of the second mortgage bonds, and requested of such board that said railway co. should immediately proceed to appoint the said Thomas Denny and Josiah B. Blossom as trustees of such second mort-
393 gage in accordance with the wishes expressed in certain powers of attorney which the said Blossom claimed to have, and which he claimed were substantially in conformity with the paragraph ten of said mortgage, and that the board of directors then and there refused to comply with the request of the said Blossom, believing at said time that he did not represent a majority of said bondholders, that he was not acting in good faith for the protection of said second bonds.

Fourteenth. Respondent admits that the fifth paragraph of the trust deed is correctly set out in the fourteenth paragraph of said cross-bill.

Fifteenth. Respondents admits that after this respondent and said Denison were requested to resign, as recited in the twelfth paragraph of said cross-bill, and within six months after the default in the payment of interest on the said second mortgage bonds matured July 1, 1874, and the request of said company to make payment thereof, the said complainants in said cross-bill made a written request to
394 the officers and directors of the Indianapolis, Bloomington & Western Railroad Co. to deliver to said Blossom & Denny the actual possession of said railway as provided, as they claimed, in paragraph five of the said second mortgage, which request, respondent admits, was not complied with, because, among other things, the request was not in due form, neither was the same in accordance with law, nor was it then at the time such request was made in the power of said railway company to comply therewith in justice to its creditors. Respondent also admits that the resolution set out in paragraph fifteen of said cross-bill was offered, and that the same was not concurred in.

Sixteenth. Respondent admits that the second paragraph in the trust deed is correctly set out in the sixteenth paragraph of said cross-bill.

Seventeenth. Respondent is not advised whether the complainants in said cross-bill had been advised by counsel learned in the law that said Indianapolis, Bloomington & Western Railway Co. should, for the better assuring and confirming the title and powers of the trustees of the second mortgage to the premises and property therein con-
395 veyed, executed and delivered, for the benefit of parties in interest, a chattel mortgage on the personal property, rolling stock, and equipments of said railway co., in conformity with paragraph No. 2 of the said deed of trust, and neither admits nor denies said allegation; but admits that after the said property had passed into the hands of a receiver that such a demand and request was made, and that the same was not complied with for the reason that the said property was then out of the possession, power, and control of the said railway co., and if they wished any lien upon any of the said property they should have applied to the proper court.

Eighteenth. Respondent admits that all the property of the Indianapolis, Bloomington & Western Railway Co. of every description and character is covered and encumbered by some kind of mortgage, and that such property is at the present time *is* inadequate in value to the payment of such mortgage bonds in full, and that the said railway co. is not at present able to extinguish its liabilities.

And this respondent, further answering, says that all that part of said cross-bill in which it is charged that this respondent has used

396 any of the means of said company for individual or private ends, or diverted any of the earnings of said company for any illegal or fraudulent purposes, or that he has in the premises done any act or thing unlawful or dishonest, is untrue, as this respondent is advised and believes.

And now, having answered fully, he prays to be dismissed hence with reasonable costs.

B. E. SMITH,
By INGERSOLL & CUTERBAUGH,
His Sol's.

STATE OF OHIO,
Franklin County, ss.

Benjamin E. Smith, being duly sworn, upon his oath says that the foregoing answer by him subscribed is true to the best of his knowledge, information, and belief.

BENJ. E. SMITH.

Subscribed and sworn to before me this 8th day of June, 1875.
[NOTARIAL SEAL] R. B. SMITH,
Notary Public, Franklin Co., Ohio.

(Indorsed:) Filed July 14th, 1875. Wm. H. Harrison, cl'k.

397 *Answer of Wm. Dennison to X-bill of Blossom & Adriance.*

De Witt county circuit court, March term, 1875.

STATE OF ILLINOIS,
De Witt County.

MALCOLM C. TURNER ET AL.
versus
WILLIAM DENNISON ET AL. } In c'y.

THOMAS DENNY ET AL.
THE FARMERS' LOAN AND TRUST CO. ET AL. } Cross-bill.

The separate answer of William Dennison, one of the defendants, to the cross-bill filed in said cause by Thomas Denny, John C. Adriance, and Josiah B. Blossom, not waiving any right of exception to said cross-bill of complainants in this cause by reason of the numerous errors therein, for answer, says:

That he admits that the said Indianapolis, Bloomington and Western Railway Company did execute and deliver to him and Benjamin E. Smith, as trustees, said second mortgage or trust deed, dated October 1st, 1870; but he neither admits nor denies the legal effect of said mortgage in respect of the chattel mortgage mentioned in said
398 cross-bill, or of the right of creditors of said railway company under it, as claimed under said second mortgage.

Defendant further says that he has no knowledge to what uses the proceeds of the bonds issued under said second mortgage, or any of them, have been applied, and neither admits nor denies whether any of such proceeds were expended in the purchase of rolling stock for said railway, or whether the engines and rolling stock, or any part thereof, now used on said railway or any part thereof were purchased chiefly or

in any part with such proceeds or funds. As to each and all these matters defendant has no knowledge whatever.

Defendant, further answering, says that he has been informed and believes that the said Indianapolis, Bloomington and Western Railway Company failed to pay the coupons of the bonds secured by said second mortgage due July 1st, 1874, on said day, and that he has no knowledge of any of said coupons having been paid since that day, but he neither admits nor denies the presentation of any of said coupons for payment, as alleged in said cross-bill, and has no knowledge thereof except as informed by said cross-bill.

399 Defendant, further answering, says that he has never been requested by any holders or holder of any of said bonds secured by said second mortgage, or by the holders of any coupons or coupon of the same, to discharge any duty or trust devolved upon him as trustee of said second mortgage bonds on account of said default of said railway company, or on any other account whatsoever; and he avers the fact to be that until he resigned his said office of trustee he was always ready and willing to execute any and all trusts and duties attaching to or devolving upon him as such trustee according to the requirements and condition of said second mortgage or trust deed. Defendant admits that he received in due course of mail, under cover of a letter dated Indianapolis, Ind., November 10th, 1874, purporting to have been written by one John C. Adriance, a printed circular, dated New York, October 20th, 1874, signed Adrian Van Linderen, secretary, addressed to the second mortgage bondholders of the Indianapolis, Bloomington and Western Railway Co., purporting to contain the proceedings of a meeting of holders of the second mortgage bonds of said railway com-

400 pany held in the city of New York, October 20th, 1874, which circular contained, among others, a resolution as follows, to wit:

"Resolved, That in the opinion of this meeting the position occupied by the present trustees of the second mortgage bonds of being largely interested in the general debt of the company, renders a change of the officers eminently just and proper, and that the bondholders therefore request the board of directors to comply with the petition of even date herewith, to which the names of a large majority of the second mortgage bondholders are appended."

Defendant has no recollection of making answer to said letter or circular. He did not feel called upon to resign as requested for the reason given in said resolution, nor for any other reason, as he was conscious of his readiness and willingness to faithfully execute each and every trust devolving upon him as trustee, when properly requested so to do, according to the terms and conditions of said second mortgage or trust deed; or in case he should have found, on being so requested to execute his said trust, that his interest in the general debt of said company, or any other interest he might have had, was calculated to make him

401 pause in the prompt and faithful execution of his said trust he would have instantly resigned his said office of trustee.

Defendant, further answering, admits that he is a member of the firm of Griggs, Smith & Co., but he denies that said firm ever made or had any contract with said railway company for the construction of any part of its railway, except that said railway company by its purchase of the property and franchises of the Havana, Mason City, Lincoln and Eastern Railway Company, a consolidated company of the Havana, Mason City, Lincoln and Eastern Railway Company, and the Monticello Railroad Company, which purchase was made on the 28th day of June, 1872, assumed the obligation of said consolidated company in contracts there-

tofore made by said Monticello Railroad Company on the 17th of June, 1871, with C. R. Griggs & Co. for the construction of its railroad, and by said Havana, Mason City, Lincoln and Eastern Railway Company on the 10th of October, 1871, with Griggs, Smith and Co. for the construction of its railroad, but defendant says that both of said contracts were cancelled by the mutual consent of said Indianapolis, Bloomington and Western Railway Company and said C. R. Griggs and Co. and said
402 Griggs, Smith and Co., respectively, on the 23rd day of December, 1873, and he says that neither of said firms has now nor has had any contract with said Indianapolis, Bloomington and Western Railway Company for the construction of any of its railway or for any other purpose since said 23rd day of December, 1873.

Defendant further answering, admits that said Indianapolis, Bloomington and Western Railway Company is largely indebted to said Griggs, Smith and Company.

Defendant, further answering, denies each and every allegation of said cross-bill charging or imputing to him knowledge or approval in any form whatever of false statements in returns made by or in behalf of said Indianapolis, Bloomington and Western Railway Company to the railroad commissioners or other officers of either the State of Illinois or Indiana, and says he has no knowledge nor ever heard of any false statement or return of the condition or affairs of said company having been made by or in behalf of said company, or otherwise, to said commissioners *in* other officers of either said States or to any person or persons whomsoever, except as inferred by said cross-bill.

403 Defendant says he has no recollection of ever being consulted by any officer of the said railway company, or by any other person in respect of any statement or return to be made of the financial condition of said company to the railroad commissioners or other officers of either the States of Illinois or Indiana, or to any person or persons whomsoever, or of ever seeing any such statement or return in whole or in part made or to be made.

Respondent remembers that soon after the enactment of the law of Illinois requiring return to be made to the railroad commissioners of that State by railway companies, in answer to an inquiry of the general manager of the said Indianapolis, Bloomington and Western Railway Company on one or more points relating to the returns to be made under said law, which point or points respondent is wholly unable to recall, he advised said general manager to comply fully with such and all the requirements of the law in the making of returns on behalf of said railway company, and respondent says that except said inquiry he has no recollection of ever having been spoken to or consulted with by
404 any officer of said railway company or other person in relation to any statement or return made, or to be made, by or in behalf of said railway company of its condition, financial or otherwise, to the railroad commissioners or other officers of the States of Illinois or Indiana, or to any other persons, but if it be that respondent's memory in this regard is at fault, and his attention has ever been called to any such statement or return, he believed the same to be true in all respects from his confidence in the intelligence and integrity of the officers of said company whose duty it was to prepare such statements and returns.

Defendant says he never personally examined the books or accounts of said company, and never had any knowledge of its condition, financial or otherwise, but as informed by its officers.

Defendant, further answering, says that he has no knowledge of any

differences or discrepanc'es between the returns of the financial condition of said railway company to the railroad commissioners or other officers of Illinois and Indiana and the auditor's balance sheet alleged
405 in said cross-bill, except as informed by said cross-bill, and he does not, therefore, admit or deny the existence of such alleged differences or discrepancies, nor has defendant recollection of knowing, at any time before the date of filing of said cross-bill the amount of the floating debt of said railway company.

He therefore neither admits or denies any allegation of said cross-bill relating to the amount of the floating debt of said company at any of the times mentioned in said bill.

Defendant, further answering, says that he has no recollection of ever having been consulted by said Smith, or any member of the firm of Griggs, Smith & Co., or by any person whomsoever, in respect of any claim made or to be made against said railway company in favor of said Griggs, Smith and Co. And he denies ever having had anything to do with any settlement of accounts between said railway company and said Griggs, Smith and Co., except it may be to vote as a director for the reference of such accounts to a disinterested committee of the board of directors of said company for examination and report to said board, and to vote as such director, which he thinks he did, for the ap-
406 proval of said report of said committee; but defendant says he made no suggestion to nor had communication with any member of said committee or other person in respect of any claim of said Griggs, Smith and Co. against said railway company, nor of any matter or item of account referred to said committee for its examination and report as aforesaid.

Defendant further says that he never saw the statement of debts claimed by said Griggs, Smith and Co. due said firm from said railway company included in the chattel mortgage or schedule of debts attached thereto, mentioned in said cross-bill, nor was he ever consulted in respect of such statement or of any item of indebtedness or matter or thing in it by any member of said firm of Griggs, Smith and Co., or by any person whomsoever.

He admits that he is a stockholder of the said Western Car Company, and says that he regarded the contract of lease of cars from said company by said railway company as reasonable at *at* time of the making of such contract, but that after some experience of the practical workings under said contract he thought the rental was too high,
407 and favored a reduction, which was made.

Defendant, further answering, says that he has never seen said chattel mortgage nor the schedule of debt attached thereto, nor a copy *copy* of either or any part thereof, nor was he ever consulted by any officer of said railway company or any other person in regard to the making or execution of said mortgage, or of any chattel mortgage, or of any other security for the debts due from said railway company to said Griggs, Smith and Co., or to any other creditor of said railway company, and he denies there was any understanding between him and said Benjamin E. Smith, or any communication between them relative to the procuring of said chattel mortgage or any other security from said railway company for the security of the debts owed by said railway company to said Griggs, Smith and Co., or to any other creditor of said railway company. And he avers the fact to be that the first intimation or information he ever received from the said Smith relating in any way to said chattel mortgage was after the execution of the same by said railway company; and defendant further denies

408 that he had anything to do in the procuring of said chattel mortgage.

Defendant says he was not present at the alleged meeting of the board of directors of said railway company on the 9th of December, 1874, and that he was not a member of said board at that time; that he sent his resignation in writing, under date of November 30th, 1874, to take effect that day, to the said Benjamin E. Smith, addressed to the directors of said railway company. Defendant neither admits nor denies the allegation of said cross-bill in respect of the proceedings of said meeting of said 9th of December, 1874. He has no knowledge, except as informed by said cross-bill, of a demand having been made of the directors of said company at said meeting, or at any other time, for a chattel mortgage on the personal property, rolling stock, and equipment of said company for the benefit of the holders of said second mortgage bonds, but he says that no request was ever made of him as trustee by holders of said second mortgage bonds, or of any of them, to demand of said company to do any act, or to make a chattel mort-

409 gage or any further conveyance to him and his co-trustee, or either of them, for the benefit of the holders of said second mortgage bonds.

Defendant, further answering, admits that by paragraph of said trust deed marked 5th, recited in said cross-bill, the trustees, upon such default as is therein described, could demand possession of said railway and premises, books, records, &c., under the condition specified in said paragraph, provided the trustee or trustees should be first required to make such demand by the holders of at least one-half of all the issue of said second mortgage bonds which should then be unpaid and outstanding; but defendant says he was never required to make such demand by the holders of such numbers of said bonds, or by holders of any number of bonds issued under said second mortgage, and he further says that at all times prior to his resignation as trustee in and under said mortgage or trust deed he was ready and willing to make such demand, if required so to do, according to the requirements and condition of said 5th paragraph, or in case of finding himself embarrassed from any cause in making such demand he would have promptly resigned his said office of trustee.

410 Defendant, further answer'g, says he neither admits nor denies that said railway company is wholly insolvent, except as such alleged insolvency is predicated on the present non-payment of its debts and the placing of the property and affairs of the company in the hands of a receiver.

Defendant says he has resigned his office of trustee in and under said second mortgage or trust deed dated October 1st, 1870, in writing, under date of May 12th, 1875, addressed to the directors of said railway company, which resignation he mailed the same day to the proper address of the secretary of said company.

This respondent now having, as he is advised, fully answered to all of said cross-bill, prays that he may be hence dismissed with his costs.

WM. DENNISON.

INGERSOLL AND PUTERBAUGH,
Sol's for Def't.

DISTRICT OF COLUMBIA,
Washington County, ss:

William Dennison, being duly sworn, upon his oath says that

411 the foregoing answer by him subscribed is true to the best of his knowledge, information, and belief.

WM. DENNISON.

Subscribed and sworn to before me this 6th day of July, 1875.
[SEAL.] CHAS. JOHNSON,
Notary Public.

412 *Answer of Farmers' L. & T. Co. to X-bill of Denny.*

STATE OF ILLINOIS,
De Witt, ss:

Circuit court, August term, A. D. 1875.

The separate answer of the Farmers' Loan and Trust Company to the cross-bill filed by Thomas Denny, Josiah B. Blossom, and John P. Adriance against this respondent, Turner Brothers. The Indianapolis, Bloomington & Western Railway Company, and others in the suit of Turner Brothers against The Indianapolis, Bloomington & Western Railway Company et al., in chancery.

And now comes the said Farmers' Loan and Trust Company, by its solicitors, and saving and reserving unto itself all just right of exception to the manifold erroneous and insufficient statements in the said cross-bill contained, yet for answer thereto, or to so much thereof, and such parts thereof, as this respondent is advised it is material or proper for this respondent to answer unto, answering, says:

First. That at the time stated a bill was filed by the parties as stated. and for the purpose stated in said cross bill *bill.*

413 Second. Respondent admits the existence of The Indianapolis, Crawfordsville & Danville Railroad Company, with the powers and privileges as stated in the cross-bill.

III. Respondent admits the existence of the Danville, Urbana, Bloomington & Pekin Railroad Company, with the powers as stated in the cross-bill.

IV. Respondent admits the consolidation of said two above-named companies into one, called The Indianapolis, Bloomington & Western Railroad Company, as stated in the cross-bill.

V. As to the trust-deed by said consolidated company to William Dennison and Benjamin E. Smith, to secure the issue of one million five hundred thousand dollars of second-mortgage bonds on the entire property of said consolidated company, and as to the recording thereof, as set out in the fourth paragraph of the cross-bill, this respondent says it is entirely ignorant except as to the statements in the said cross-bill, and therefore can neither admit nor deny the same, but calls for strict proof thereof. But this respondent says if any such trust-

414 deed was made, that such trust-deed did not thereby, as in and by said cross-bill alleged, become a lien for all or any of the property then owned, or thereafter to be acquired, by said consolidated company prior to the liens or claims of any other parties to the said cross-bill; but, on the contrary, this respondent says that if any such trust-deed were made and recorded as stated in the cross-bill, it only became a lien to two other trust-deeds made to this respondent, which will be hereafter set forth.

VI. As to the making and putting into circulation of the fifteen hun-

dred bonds, secured by said trust-deed, as set out in the fifth paragraph of the cross-bill, this respondent says it is entirely ignorant, and can neither admit nor deny the same, and calls for strict proof thereof.

But this respondent denies that if such bonds were issued and sold, that engines and rolling-stock now used on said railroad, were purchased chiefly with the funds arising from the sale of said fifteen hundred bonds.

415 VII. Respondent says that it is entirely ignorant of the existence of any such trust deed, as is set out in the cross-bill, and therefore that it can neither admit nor deny that it contains any such paragraph as is set out in the sixth paragraph of the cross-bill, and this respondent therefore calls for strict proof of the allegations in said sixth clause of the cross-bill.

VIII. Respondent says as to each and every allegation in the seventh paragraph of the cross-bill, it is entirely ignorant, and therefore can neither admit nor deny the same, but calls for strict proof thereof.

IX. Respondent says as to the allegations commencing with the commencement of the eighth paragraph of the cross-bill, and going to the commencement of the tenth paragraph of the same, it is entirely ignorant, but presumes from recent information that most, if not all of said allegations are true, but further respondents cannot now state.

X. As to the allegations in the tenth paragraph of the cross-bill, this respondent is entirely ignorant, and can neither admit nor deny the same, but calls for strict proof thereof.

416 XI. As to each and every allegation in the eleventh paragraph of the cross-bill, respondent is ignorant, and can neither admit nor deny the same, and therefore calls for strict proof thereof.

XII. As to the allegations in the twelfth paragraph of the cross-bill, this respondent is ignorant, and therefore can neither admit nor deny the same.

XIII. As to all the allegations in the thirteenth paragraph of the cross-bill, this respondent is entirely ignorant, and therefore can neither admit or deny the same, but calls for strict proof thereof, if complainants deem the same material.

XIV As to the allegations in the fourteenth paragraph of the cross-bill, this respondent is entirely ignorant, and cannot therefore either admit or deny the same, but calls for strict proof of the same.

XV. As to each and every allegation in the fifteenth paragraph of the cross-bill, this respondent is entirely ignorant, and can neither admit nor deny the same, but calls for strict proof thereof.

XVI. As to the allegations in the sixteenth paragraph of the cross-bill, this respondent is ignorant, and cannot therefore either admit or deny the same, but calls for strict proof thereof.

417 XVII. As to the allegations in the seventeenth paragraph of the cross-bill, this respondent is wholly ignorant, and cannot either admit or deny the same, but calls for strict proof thereof, if complainants deem same material.

XVIII. This respondent admits that the allegations in the eighteenth paragraph of the cross-bill are true.

XIX. This respondent, further answering the said cross-bill, says that it was made a defendant to the original bill in this case, and that it duly answered said bill, and also, by leave of the court, filed in said cause its cross-bill, which said answer and cross-bill by this respondent this respondent hereby avers to be true, and respondent hereby makes the same a part of its answer hereto; and this respondent says that long before the date of the mortgage alleged to have been made in the

cross-bill of said Denny, Blossom, & Adriance, if any such were ever made, and before the said consolidation spoken of in the cross-bill last aforesaid, the said Danville, Urbana, Bloomington & Pekin Railroad Company duly made, signed, sealed, acknowledged, and delivered to this respondent, as trustee, a trust-deed on all the railroad
418 property and effects of said Danville, Urbana, Bloomington & Pekin Railroad Company, then owned or thereafter to be acquired to secure an issue of two millions of dollars of first-mortgage bonds. That said trust deed was, very shortly after its date and long before said consolidation, duly recorded in the several counties in the State of Illinois through which said railroad runs, and that said two millions of bonds intended to be secured by said trust-deed were shortly thereafter and before said consolidation issued and sold and are all now outstanding, and are, with large arrearages of interest unpaid thereon, a valid and subsisting first-mortgage lien on all the property and effects of the said consolidated company in the State of Illinois, all of which is more particularly and at large set out in the said answer and cross-bill of this respondent, to which respondent craves leave to refer for the full contents thereof.

XX. And this respondent, further answering, says that said
419 consolidated company long before the making of the trust-deed to Dennison and Smith (if any such were ever made) duly made, signed, sealed, acknowledged, and delivered to this respondent, as trustee, another trust deed on all the property and effects of said consolidated company then owned or thereafter to be acquired by it, both in the States of Indiana and Illinois, to secure an increase of five millions of dollars of bonds, which trust-deed was duly recorded in each of the counties in the States of Indiana and Illinois through which said road runs, long before the date of the trust-deed mentioned in the cross-bill of Denny, Blossom, & Adriance (if any such were ever made), and that at least three millions of dollars of the said bonds said last mentioned trust-deed to this respondent was intended to secure were duly issued, put into circulation, and sold long before the date of the trust deed mentioned in the cross-bill last aforesaid (if any such were ever made), and that said three millions of dollars of bonds so secured
420 by said second trust-deed to *to* this respondent, together with large arrearages of unpaid interest past due thereon, are now outstanding and are a valid and subsisting debt, secured by the said second trust-deed to this respondent, and are a first lien on all that portion of the property of the said consolidated company in the State of Indiana, and a second mortgage on all that part of the property of said consolidated company in the State of Illinois, all of which is more fully set out in the answer and cross-bill of this respondent, to which respondent here craves leave to refer for full particulars.

XXI. Respondent, further answering, says that it accepted the trusts imposed on it by said two indentures to it, and is now acting as such trustee, and is by its said cross-bill trying to foreclose said two indentures to it.

XXII. Respondent, further answering, says that said two indentures to it are the first liens on all the property and effects of every kind
421 and nature of said Indianapolis, Bloomington & Western Railroad Company, both in the States of Indiana and Illinois, without regard to when or how the same were acquired.

XXIII. Respondent, further answering, says that if any such trust-deed has ever been made, as in and by the said cross-bill of Denny, Blossom, and Adriance described, that the same is only a junior lien to

the said two indentures made to this respondent, which are entitled to be paid in full before anything is paid on the said trust-deed set out in the cross-bill.

XXIV. And now this respondent having, as it is advised, fully answered the said cross-bill of the said Denny, Blossom, and Adriance, prays that it may be hence dismissed with its reasonable costs, and as in duty bound, &c.

THE FARMERS' LOAN & TRUST CO.,
By WILLIAMS, BURR & CAPEN,
Its Solicitors.

(Endorsed:) Filed Aug. 18, 1875. Wm. H. Harrison, cl'k.

422 *Answer of C. W. Smith to original bill.*

DeWitt circuit court. March term, A. D. 1876.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY ET AL.

The answer of Charles W. Smith to the original bill of complainant herein.

The said defendant, saving & reserving to himself all and all manner of exceptions to the many insufficiencies of the original bill herein filed, and says that he admits the due incorporation of the Indianapolis, Crawfordsville and Danville Railroad Company of Indiana, and the Danville, Urbana, Bloomington and Pekin Railroad Company of Illinois, as alleged in said bill; he further admits that the said two companies duly consolidated with each other in accordance with law and formed the Indianapolis, Bloomington and Western Railway Company, as alleged in said bill.

He further admits that thereafter the said Indianapolis, Bloom-
423 ington and Western Railway Company purchased the property and franchises of the Havana, Mason City, Lincoln and Eastern R. R. Co., as set forth in said bill. He further admits that at and before the institution of this action the said I., B. & W. R. W. Co. owned and were in possession and user of a line of railroad extending from Indianapolis, in the State of Indiana, to Pekin, in Illinois, and an extension completed from the main line at Urbana to Decatur, and also to Havana, on the Illinois River, and in the user of the said railway company was a large amount of equipment, engines, and machinery appurtenant to said road and essential to its operation. This defendant neither admits nor denies the allegations concerning the execution of the trust-deed to The Farmers' Loan and Trust Company, or that to Benjamin E. Smith and William Dennison, or any of the other trust-deeds referred to in the said original bill, except as hereinafter
424 shown. He admits that on the 28th day of June, A. D. 1872, the I., B. & W. R. W. Co. duly executed, acknowledged, and delivered to William Dennison and Robert Turner the certain trust conveyance, as set forth in said bill of complaint, conveying to them, as trustees, all and singular the railway of the said I., B. & W. R. W. Co. from Champaign, in Champaign Co., in Illinois, thence to the town of White Heath, in the county of Piatt, Clinton, DeWitt Co., Lincoln, in Logan County;

Mason City and Havana, in Mason County, westwardly to the Mississippi River, and also from the said town of White Heath by way of Monticello, in Piatt Co., to the city of Decatur, in Macon County, all in the State of Illinois, together with all the franchises, equipments, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind, and nature used in or connected with the operation of the said line of railroad, and including all property between said terminal points which the said railway then owned or might thereafter acquire,
425 said indenture being in trust to secure the payment of principal and interest of 5,500 bonds, of one thousand dollars each, date July 1st, 1872, payable to bearer on July 1st, 1912, principal and interest payable in gold coin of the United States, with interest warrants at the rate of seven per cent. per annum, payable on the first days of January and July of each year at the office of the company in the city of New York.

He further admits that said trust-deed was duly recorded in the proper counties, and is a valid lien on said line of railroad as alleged in said bill. He also admits that, as alleged in said bill, the said railway company defaulted in the payment of the semi-annual interest due on the first day of July, 1874; and further shows that the said company has defaulted in the payment of interest due on the first days of January, A. D. 1875, and January, A. D. 1876. The defendant further shows that the said William Dennison, one of the original trustees, resigned his trust under said deed, and that this respondent was duly ap-
426 pointed his successor in the trust under the provisions of said deed of trust; and further shows that Robert Turner, the other original trustee has, since his appointment, been duly adjudicated by the U. S. district court, for the southern district of New York a bankrupt.

And this defendant denies all and singular the allegations not otherwise admitted or traversed, and prays, &c.

C. W. SMITH.

H. CRAWFORD,
S. P. MCCONNELL,
Solicitors.

427 *Cross-bill of C. W. Smith.*

De Witt circuit court, March term, A. D. 1876.

To the honorable judge of said court, in chancery sitting:

Humbly complaining, showeth unto your honor, your orator, Charles W. Smith, that hertofore, to wit, prior to July 12th, 1869, there was a railroad corporation organized and existing under the laws of Indiana, called the Indianapolis, Crawfordsville & Danville Railroad, which corporation was vested with full power to locate, construct, and operate a line of railroad from Indianapolis, Indiana, eastwardly through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren to the western boundary line between Indiana and Illinois; and the said corporation was further vested with full corporate power to borrow money, issue bonds, and secure the payment of the same by mortgage; and the further power and franchise of consolidation with connecting lines of railroad in other States.

And by virtue of an act of the general assembly of the State
428 of Illinois, approved Feb'y 28th, 1867, there was created and organized a corporation of the State of Illinois called the Danville, Urbana, Bloomington & Pekin Railroad Company, which corporation

was fully endowed with power to construct the line of railroad from Pekin to the eastern boundary line of the State of Illinois, and with the further power to consolidate with, connect with, and purchase other lines of railroad, as provided in the said charter, and with the further power to borrow money, issue bonds, and secure the payment of the same by mortgage on the corporate franchises and property belonging to said corporation.

And on the 12th day of July, 1869, the said Indianapolis, Crawfordsville & Danville Railroad Company, and the said Danville, Urbana, Bloomington & Pekin Railroad Company, being the owners of lines of railroad connecting at the State line, did, as thereto authorized by their respective charters, and the laws of Illinois and Indiana, and in
429 due conformity with law, consolidate their stock, property, and franchises and became one corporation, called the Indianapolis, Bloomington & Western Railway Company, which said last-named corporation thereby became duly vested with all and singular the property, equipment, assets, and franchises of said two original corporations.

Prior to the 28th day of June, 1872, there was a corporation of the State of Illinois called the Havana, Mason City, Lincoln & Eastern Railway Company, being formed by a consolidation between a previous corporation of the same name, and another corporation of Illinois called the Monticello Railroad Company. The said Havana, Mason City, Lincoln & Eastern Railway Company possessed certain franchises under its charter, and also a line of railroad in process of construction from the city of Decatur to Champaign, and from said last-named place westwardly through Clinton, Lincoln, Mason City, Havana, to a point on the Mississippi River.

And thereafter, on the said June 28, 1872, the said Havana,
430 Mason City, Lincoln & Eastern Railway Company, did as thereto duly authorized by its charter according to law, duly sign, seal, execute, acknowledge, and deliver unto the said Indianapolis, Bloomington and Western Railway Company a deed of conveyance of all and singular the said authorized and partially constructed line of railroad belonging to said Havana, Mason City, Lincoln & Eastern Railway Company, together with all its franchises, liberties, and privileges, in any manner pertaining to said line of railroad, a copy of which conveyance is duly set forth as an exhibit to the original bill herein, and your orator prays reference thereto.

And on the 28th day of June, the said Indianapolis, Bloomington and Western Railway Company (being then fully vested with the title to and in actual possession of said line of railroad and franchises prior to that date belonging to said Havana, Mason City, Lincoln &
431 Eastern Railway Company) in order to borrow money for the purpose of constructing, operating, and maintaining its said line of railroad, did, under the order of its board of directors, and as thereto duly authorized by law, sign, seal, and acknowledge, execute, and deliver unto the defendants William Dennison and Robert Turner its certain deed of trust or mortgage, conveying to said Dennison & Turner all and singular the railway belonging to said grant or corporation, extending from Champaign to the town of White Heath, in the county of Piatt, to Clinton, in De Witt County, to Lincoln, in Logan County, to Mason City and Havana, in Mason County, thence westwardly to the Mississippi River, and also from the said town of White Heath, by way of Monticello, to the city of Decatur, Macon County, all in the State of Illinois, and being in length about 215 constructed and to be con-

structed together with all the franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind and nature used in or connected with the operation of said line
432 of railroad, including all rents, reservations, reversions of every nature and kind whatever, and including all the property between said terminal points which the said railway company then owned or might thereafter acquire.

And the said indenture was duly recorded according to law in all the counties through or into which the said line of railroad runs, and by force of the execution and delivery and record of such instrument, your charged that the same hereby became and has since continued to be a valid first lien in all and singular the real and personal property and income specified in the said trust conveyance.

And your orator shows that all and singular the 5,500 bonds recited in the said trust conveyance, as designed to be issued under the said mortgage, have been negotiated either absolutely or by way of hypothecation in the usual course of business and for value, and all of the said $5,500,000 of so-called "extension" mortgage bonds are still out-
433 standing liabilities of said corporation, and, together with certain interest thereupon, remain wholly unpaid by said corporation, and your prays reference to a copy of said trust conveyance filed with the original bill herein as an exhibit.

And your orator shows that in and by the said mortgage and the lands given to secure the payment of the sums so borrowed, it is provided and agreed that the said Indianapolis, Bloomington & Western Railway Company will pay at its office or agency, in the city of New York, interest on said 5,500 bonds, and each of them at and after the rate of 9 per cent. per annum in gold coin of the United States on the first days of January and July in each year until the maturity of the principal thereof; and your orator shows that on the first days of July, 1874, January, 1875, July, 1875, and January, 1876, the said Indianapolis, Bloomington and Western Railway Company did not have any funds on deposit to make payment of the semi-annual interest on
434 such extension bonds at the place where the same were payable, but although large numbers of such coupons were presented at each of said dates, the said corporation made default in the payment of any interest thereupon, and such default has so continued since the said July 1, 1874, and the entire amount of two years' interest is now due on said issue of $5,500,000 of extension bonds.

And your orator further shows that since the institution of this action that William Dennison, one of said trustees, resigned his said trust, and his resignation was accepted, and the board of directors of said Indianapolis, Bloomington and Western Railway Company duly appointed your orator as his successor in said trust, and as your orator is further informed and believes and so charges, the other trustee, Robert Turner, since the institution of this action, been duly adjudi-
435 cated a bankrupt by the district of the United States for the southern district of New York, and by reason of such bankruptcy, as your advised, the said Turner has become incapacitated from properly discharging his duties as such trustee, and your orator is for such reason charged with the duty as trustee of bringing to the attention of this court the rights and interests of his beneficiaries, the divers holders of such extension bonds. And your orator further shows that on the prayer of the original bill filed herein, this court has taken possession of all and singular the property of said railroad corporation, real and personal, including the said extension line

of railroad and its appurtenances and equipment, and since the date of appointment of receiver this court, by its officer, has been in the receipt of the tolls and revenues of all said extension line of railroad.

And your orator further shows that a very large amount of the bonds secured by the mortgage to your orator, or the proceeds thereof, were used in the purchase of equipment, engines, cars, and machinery
436 for the said line of railroad, which hath been continuously operated as a unit, and without any distribution of its equipment to any particular portion of said line, and, as to all such equipment so purchased, your orator claims that the said trust conveyance to your orator is entitled to the priority over any other lien or claim whatever.

And your orator is advised that the Farmers' Loan and Trust Company, by their cross-bill filed herein, claim to have some right, title, lien, or claim to or upon the said extension line of railroad, and the equipment and machinery of said line of railroad, but your orator avers that neither of said trust conveyances referred to in such cross-bills in any manner embraces the said extension line of railroad, or any part thereof, and the same were never so recorded as to become liens thereupon in any manner, and the said cross-complainants have no lien or claim upon any of said equipment purchased with such extension bonds, or
437 the proceeds thereof, and your orator prays that the said claims of the said cross-complainants, the said Farmers' Loan and Trust Company and the said Denny and others, may be duly investigated, and that their legality, extent, and amount may be ascertained, and also the just rights and priorities of your orator as representing such extension bondholders.

And your orator specially prays that the court will establish and decree the lien of your orator's trust conveyance to be binding and paramount upon such portion of the equipment of said road as the evidence and the adjustment of priorities will show it is entitled.

And your orator further prays that the court will ascertain the amount due under such trust conveyance to your orator upon the said bonds and coupons: that it will further duly establish the lien, preference, and priority to which the said bondholders represented by your orator are in any manner entitled upon the said property, or any part thereof, and enforce the same in such manner as shall be equitable.

438 And your prays that the court will enroll a decree for the amount of such sum as is ascertained to be due on such bonds, and either order the sale of said property under the said trust-deed, or enrol a decree determining the interest of said railroad company in and to said property by strict foreclosure, or putting your orator in possession of his trust estate, or such other and further relief as may be necessary and proper to establish and protect the rights of such class of bondholders.

And your orator prays that the said railroad company, The Farmers' Loan & Trust Company, Thomas Denny, Josiah B. Blossom, John P. Adriance, Benjamin E. Smith, and Joseph T. Thomas may be made defendants hereto, duly summoned to answer the premises, under oath, and to stand to and abide the premises.

C. W. SMITH,
Cross-Complainant.

H. CRAWFORD,
S. P. MCCONNELL,
Solicitors.

(Endorsed:) Filed Mar. 29th, 1876. Wm. H. Harrison, cl'k.

439 *Suggestion of bankruptcy of Turner Bros.*

In circuit court De Witt County, Illinois, March term, A. D. 1876.

Comes now the Indianapolis, Bloomington and Western Railway Company and suggests to the court that this suit has become defective, in this, that all said complainants in the original bill have, since the institution of this action, become adjudicated bankrupts by order of the district court of the U. S. for the southern district of New York, and, as this defendant is advised, one John Castro, of New York City, has been appointed assignee of their estate, and this defendant exhibits herewith a duly certified copy of such bankruptcy proceedings, and this defendants says that the said assignee in bankruptcy has become and is a necessary party complainant instead of said original complainants, and is a necessary codefendant to the cross-bills filed herein, and that this cause cannot proceed without his presence on the record, and therefore this defendant moves the court that the said required by due service of an order to that effect to make himself a party complainant in this
440 action within such time as the court may designate, and that all proceedings herein be stayed until such substitution.

I., B. & W. R'Y Co.,
By DONOHUE & KELLY,
Its Attorneys.

(Endorsed:) Filed March 30th, 1876. Wm. H. Harrison, cl'k.

441 *Bankruptcy proceedings vs. Turner Bros.*

The President of the United States of America to all to whom these presents shall come, greeting:

Know ye that we, having inspected the records and files of the district court of the United States for the southern district of New York, do find certain paper writings there remaining of record, in the words and figures following, to wit:

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The petition of the Fourth National Bank of the city of New York, of No. 14 Nassau st., in said city; James Stuart, John S. Aughiltree, Joseph Stuart, Robert W. Stuart, composing the firm of J. & J. Stuart & Co., of No. 33 Nassau street, New York City; The Irving National Bank, of No. 287 Greenwitch street, New York City; Philip F. Taber, of Pawling, N. Y.; William Jeffreys, of East Orange, N. J.; Havilah M. Smith and William C. Smith, composing the firm of Havilah M. Smith & Son of No. 35 Nor' Moore street, New York City; Donald A. Manson, of No. 75 New street, New York City; John Schneadeker, executor of Charles
442 A. Schneadecke, deceased, of Brooklyn, N. Y.; The Importers and Traders' National Bank, of No. 247 Broadway, New York City; Emory M. Sage, of , New York City; Gilbert Oakley, of No. 115 West street, New York City; Christian Elums, of 158 West street, New York City; Jurgen H. Wellbrock and Henry Wellbrock, composing the firm of J. H. & H. Wellbrock, of No. 63 Vesey st., N. Y. City; Morris Livingston, of No. 121 Liberty street, New York City; Benjamin D. Benson, of No. 60 Liberty street, New York City; John

Cox and Thomas Cox, comprising the firm of A. Cox's Sons, of No. 25 Maiden Lane, New York City; John T. Carr and , comprising the firm of John T. Carr & Co., of No. 18 Barclay street, New York City; Theodore Matchell, of No. , New York City; Herman C. Tranche, of No. 165 Broadway, New York City; John B. Snook, of No. 12 Chambers street, New York City; Hugh McRoberts, county treasurer of Richmond Co., of Tompkinsville, Staten Island, N. Y.; Charles White, of Sing Sing, N. Y.; Andrew Stuart and , composing firm of Andrew Stuart & Co., of No. 35 Pine street, New York City; Hanover National Bank, No. 33 Nassau street, New York City, respectfully shows that your petitioners are severally creditors of Malcom
443 C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, composing the firm of Turner Brothers, who for a period of six months next preceeding the filing of this petition have carried on business as bankers, at No. 14 Nassau street, in the city of New York, in the county and State of New York and district aforesaid; that said Malcom C. Turner, James Turner, Archibald Turner, and Joseph S. Decker severally reside in the said city, county, and State of New York, and said Thomas C. Turner, Robert Turner, and George M. Turner severally reside in the city of Brooklyn, county of Korgo, and State aforesaid.

That the several demands of your petitioners are provable against the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, as such copartners, in accordance with the provision of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and the act amendatory thereof.

That your petitioners severally believe that the said Malcom C.
444 Turner, Thomas C. Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, as such copartners, owe debts exceeding the sum of three hundred dollars.

That your petitioners constitute one-fourth at least in number of the creditors of said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, as such copartners, required by said act.

That the aggregate of your petitioners' demands provable under said act against said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, as such copartners, amounts to at least one-third of the debt so provable.

That the nature of the said several demands of your petitioner against the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and George S. Decker is as follows:

That the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and George S. Decker, as such copartners as aforesaid are indebted to said The Fourth
445 National Bank, of the city of New York, in the sum of one hundred and eighty-five thousand dollars, being the amount of certain notes and drafts on which said firm of Turner Brothers are indorsers, held by the said bank, a schedule whereof, with particulars description is annexed to the deposition of said petitioning creditors, The Fourth National Bank, filed herewith; that the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, George M. Turner, and

Joseph S. Decker, as such copartners, are indebted to James Stuart, John S. Augheltree, and Joseph Stuart and Robert W. Stuart, composing the firm of J. & J. Stuart & Co., of the city of New York, in the sum of ten thousand dollars on a draft drawn by Greggs, Smith & Co. on said Turner Brothers, and by them accepted in the regular course of business and purchased by said firm of J. & J. Stuart & Co. in the regular course of business.

That the said Malcom C. Turner Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker are indebted as such copartners to said The Irving National Bank, of the city of New York, in the sum of ten thousand dollars,
446 on four several promissory notes for the sum of $2,500 each, drawn by the Indianapolis, Bloomington & Western Railway Company, payment of said notes being guaranteed by said firm of Turner Brothers.

That the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker are indebted as such copartners to the said Philip T. Taber in the sum of twenty-four hundred and thirty-eight & $\frac{87}{100}$ dollars, being the balance of moneys to said petitioner's credit deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner William Jeffreys in the sum of two thousand and fifty-six $\frac{74}{100}$ dollars, being the balance of moneys to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing said firm of Turner Brothers, as such copartners, are indebted to your petitioner Havilah M. Smith and William C. Smith, composing the firm of Havilah M. Smith & Son, in the sum of ninety-seven hundred & sixty-six $\frac{64}{100}$ dollars, being
447 the balance of moneys to your petitioners' credit, deposited by them with said firm of Turner Brothers as bankers.

That said parties composing said firm of Turner Brothers, as such copartners, are indebted to your petitioner Donald A. Manson in the sum of eighty-three hundred and sixty-two $\frac{36}{100}$ dollars, being the balance of moneys to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing said firm of Turner Brothers, as such copartners, are indebted to your petitioner John Schneadecke, executor of Charles A. Schneadecke, dec'd, in the sum of fourteen hundred and sixty-three $\frac{92}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are credited to your petitioner The Importers and Traders' National Bank, of the city of New York, in the sum of nine thousand dollars, being four promissory notes made by said firm of Turner Brothers for the sum of $2,250 each, and held by said bank.

448 That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner Emory M. Sage in the sum of sixty-two hundred and eighty-nine $\frac{11}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing said firm of Turner Brothers, as such copartners, are indebted to your petitioner Gilbert Oakley in the sum of three thousand and fifty-nine dollars, being the balance of moneys

to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner Christian Glimien in the sum of fifteen hundred and four $\frac{73}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioners J. H. & H. Well-
449 brook in the sum of eighteen hundred and seventy-nine $\frac{85}{100}$ dollars, being the balance of moneys to your said petitioners' credit, deposited by them with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your said petitioner Morris Livingston in the sum of three hundred and eighty-one $\frac{43}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your said petitioner Benjamin D. Benson in the sum of thirteen hundred and forty-two $\frac{81}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioners A. Cox's Sons in the sum of eleven hundred and forty-two $\frac{39}{100}$ dollars, being the balance of moneys to your said petitioners' credit, deposited by them with said firm of Turner Brothers as bankers.

450 That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your said petitioners John T. Carr & Co. in the sum of twenty-seven hundred and sixty-eight $\frac{33}{100}$ dollars, being the balance of moneys to your said petitioners' credit, deposited by them with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your said petitioner Theodore Mitchell in the sum of eleven hundred and fifty-one $\frac{78}{100}$ dollars, being the balance of money to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said *firm* composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner Herman C. Tranche in the sum of two hundred and fifty-six $\frac{24}{100}$ dollars, being the balance of moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner John B. Snook in the
451 sum of five hundred and sixty-seven $\frac{44}{100}$ dollars, being the balance of moneys to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner Hugh McRoberts, county treasurer of Richmond County, N. Y., in the sum of twenty-one thousand three hundred and sixty-three $\frac{18}{100}$ dollars, being the balance of moneys to your petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted your said petitioner Charles White in the sum of forty-three hundred and thirty-nine $\frac{31}{100}$ dollars, being the balance of

moneys to your said petitioner's credit, deposited by him with said firm of Turner Brothers as bankers.

That said parties, as such copartners, composing the firm of Turner Brothers, are indebted to your said petitioner Andrew Stuart & Co. in the sum of forty-two hundred and one & $\frac{15}{100}$ dollars, being the balance of moneys to the credit of one W. E. Adams, deposited by him
452 with said firm of Turner Brothers as bankers, and duly assigned by said W. E. Adams to your petitioner Andrew Stuart & Co., for value.

That said parties composing the said firm of Turner Brothers, as such copartners, are indebted to your petitioner The Hanover National Bank, of the city of New York, in the sum of ten thousand dollars, being two promissory notes for $5,000 each, each held by said bank, drawn by the Indianapolis, Bloomington & Western Railway Company, payment of said notes being guaranteed by said firm of Turner Brothers, for value.

And your petitioners further represent that within six calender months next preceeding the date of this petition, the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, composing the firm of Turner Brothers, did commit an act of bankruptcy within the meaning of said act, to wit, in that the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, being copartners and bankers, doing business at 14 Nassau street, New York City, as aforesaid, and within said district, to wit, on the 5th day of May, 1875, and thereafter un-
453 til the date of this petition, being a space of more than forty days, the said Malcom C. Turner, James Turner, Thomas C. Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, being bankers and copartners as aforesaid, failed to pay of their depositors on demand of payment lawfully made, to wit, the sum of $770.47, being amount or deposit belonging to estate of William Pine, deceased, represented by Fanny Talbot, of Elmwood, Bridgewater, Somerset, England, executrix of George T. Talbot, dec'd, who was executor of Mrs. Emma Pine, widow and executrix of said William Pine, dec'd; payment of which was demanded May 5th, 1875; and further, the said firm of Turner Brothers, aforesaid did, on the 10th day of June, 1875, suspend payment of all their deposits and indebtednesses, and have not since resumed the same, and are in fact insolvent and totally unable to resume.

Wherefore your petitioners pray that they, the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, and the said firm of Turner Brothers may be declared bankrupts, and that a warrant may issue to take possession of the estate of said Malcom C. Turner, Thomas
454 C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, and the said firm of Turner Brothers, that the same may be distributed according to law,

and that such further proceedings may be had thereon as the law in such cases prescribes.

Dated New York City, June 16th, 1875.

FOURTH NATIONAL BANK OF NEW YORK,
By P. C. CALHOUN, *Treas.*
J. & J. STUART & CO.,
By JAMES STUART.
IRVING NAT'L BANK,
By JOHN CASTUN, *Pres't.*
PHILIP T. TABER.
WM. JEFFREYS.
HAVILAH M. SMITH & SONS.
DONALD A. MANSON.
JOHN SCHENADKE, *Ex.*
IMPORTERS & TRADERS' NAT'L BANK, OF NEW YORK,
By RUSSEL SAGE, *V. Pres't.*
EMORY M. SAGE.
GILBERT OAKLEY.
CHRISTIAN GLENNIN.
J. H. & H. WELLBROCK.
M. LIVINGSTON.
BENJ. W. BENSON.
A. COX'S SONS.
JOHN T. CARR & CO.
455 THEODORE MATCHETTE.
HEMAN C. TRANCHE.
HUGH McROBERTS.
CHARLES WHITE.
ANDREW STUART & CO.
HANOVER NAT. BANK,
By C. H. HAMILTON, *Pres't.*
JOHN B. SNOOK.

CHARLES H. WOODBURY,
Solicitor for Petitioning Creditors,
33 Pine st., New York City.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Philo C. Calhoun, president of the Fourth National Bank of the city of New York, one of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

FOURTH NATIONAL BANK OF NEW YORK,
By P. C. CALHOUN, *President.*

Subscribed and sworn to before me this 16th day of June, 1875.
456 JOSEPH GUTMAN,
United States Commissioner, S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James Stuart, of the firm of J. & J. Stuart & Co., one of the petitioners above named, do hereby make solemn oath that the statements

contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are therein stated on information and belief are true according to the best of my knowledge, information, and belief.

JAMES STUART, *Petitioner.*

Subscribed and sworn to before me this 16th day of June, A. D. 1875.

JOSEPH GUTMAR, JR.,
United States Commissioner, S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John Castree, president of the Irving National Bank, of the
457 city of New York, one of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true so far as the same are stated of my own knowledge and belief, and that those matters which are therein stated on information and belief are true, according to the best of my knowledge, information, and belief.

IRVING NATIONAL BANK,
By JOHN CASTREE, *Pres't, Petitioner.*

Subscribed and sworn to this 16th day of June, A. D. 1875, before me.

JOSEPH GUTMAN, JR.,
United States Commissioner, S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Phillip T. Taber, of Pawling, N. Y., one of the petitioners above named, do hereby make solemn oath that the statement contained in the foregoing petition subscribed by me are true so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

PHILIP T. TABER, *Petitioner.*

458 Subscribed and sworn to before me this 17th day of June, 1875.

JOSEPH GUTMAN, JR.,
United States Commissioner, S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Jeffreys, of East Orange, N. Y., one of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

WM. JEFFREYS,
Petitioner.

Subscribed and sworn to before me this 17th day of June, 1875.

JOSEPH GUTMAN, JR.,
United States Commissioner, S. D. of N. Y.

459 *Order to show cause upon creditors' petition.*

(Involuntary bankruptcy.)

In the district court of the United States for the southern district of New York. In bankruptcy.

In the matter of Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, composing firm of Turner Brothers, against whom a petition for adjudication of bankruptcy was filed on the day of , A. D. 187 .

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Upon reading and filing proofs sustaining the allegation of the petition in the matter aforesaid, it is ordered that the said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker do appear before this
460 court, as a court of bankruptcy, to be holden at the city of New York, in the county of New York, in said district, on the 13th day of July, 1875, at 12 o'clock m., and show cause, if any there be, why the prayer of said petition should not be granted.

It is further ordered that a copy of said petition, together with a copy of this order, be served on said Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, by delivering the same to each of them personally, or by leaving the same at the last usual place of abode of each of them at least five days previous to the day herein required for their appearance.

Witness the Hon. Samuel Blatchford, judge of the said district court, and the seal thereof, at the city of New York, in said district, on the 13th day of July, A. D. 1875.

GEO. T. BETTS,
Clerk of District Court for said District.

(Copy of endorsement on back of above:) No. 5182. District court of the United States for the southern district of New York. (In
461 bankruptcy.) In the matter of Malcom C. Turner and others against whom a petition for adjudication of bankruptcy has been filed. Order to show cause upon creditors' petition. Filed this 3rd day of July, A. D. 1875, at 3 o'clock p. m.

Creditors' petition.

In the district court of the United States for the southern district of New York. In bankruptcy. No. 5182.

In the matter of Malcom C. Turner, James C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, bankrupts.

At the city of New York, in said district, 13th day of July, A. D. 1875.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

This cause came on to be heard at the city of New York, in
462 said court, and on reading and filing proof of due service of a

copy of the creditors' petition herein, and order to show cause on Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker, the bankrupts above named, more than five days before the return day of the said order to show cause, and Charles H. Woodbury, esq., appearing on behalf of the petitioning creditors, and no one appearing in opposition, the said bankrupts, Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, & Joseph S. Decker, being called in open court, came not, but made default to appear pursuant to said order to show cause.

And thereupon, and upon consideration of the proofs in said cause, it was found that the facts set forth in said petition were true; and it is therefore adjudged that Malcom C. Turner, Thomas C. Turner, James Turner, Archibald Turner, Robert Turner, George M. Turner, and Joseph S. Decker became bankrupts within the true intent and meaning of the "bankruptcy" before the filing of the said petition, and they are therefore declared and adjudged bankrupts accordingly.

And it is further ordered that the said bankrupts, and each of
463 them, within five days after the date of this order, make and deliver, or transmit by mail, post paid, to the marshal, as messenger, a schedule of his creditors, and an inventory of his estate, in the form and verified in the manner required of the petitioning debtor by the said revised statutes.

And it is further ordered that the above-entitled cause be referred to Isaac Dayton, esquire, one of the registers in bankruptcy of this court, to take such proceedings therein as are required by the said revised statutes.

Witness the honorable Samuel Blatchford, judge of the said court, and the seal thereof, at New York, in said district, on the 13th day of July, A. D. 1875.

[SEAL OF THE COURT.] GEO. F. BETTS,
Clerk of the District Court for said District.

I, George F. Betts, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of the original adjudication in bankruptcy made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this thirteenth day of July, in the year of our Lord one
464 thousand eight hundred and seventy , and of the Independence of the United States the one hundredth.

[SEAL OF THE COURT.] GEO. F. BETTS, *Clerk.*

(Endorsed on back of above:) No. 5182. United States district court for the southern district of New York. In bankruptcy. In the matter of Malcom C. Turner and others, bankrupts. Certified copy. Adjudication of bankruptcy. Creditors' petition. Filed July 13, 1875, at 12 o'clock m.

All of which we have caused by these presents to be exemplified and the seal of the said district court to be hereunto affixed.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 21st day of March, in the year of our Lord one thousand eight hun-

465 dred and seventy-six, and of our Independence the one hundredth.

[SEAL OF THE COURT.] GEO. N. BETTS, *Clerk.*

I, Samuel Blatchford, judge of the said district court, do hereby certify that the foregoing exemplification is in due form of law.

SAM'L BLATCHFORD, *D. J.*

466 *Answer of Danville Banking & Trust Co. to original bill.*

In the circuit court, March term, 1874.

STATE OF ILLINOIS,
De Witt County, ss:

The answer of the Danville Banking & Trust Co. to the bill of Malcom C. Turner, Thomas C. Turner, James Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, a copartnership under the firm name and style of Turner Bros., against the Indianapolis, Bloomington & Western Railroad Co., The Farmers' Loan & Trust Co., William Denison, Benj. E. Smith, Robert Turner, Joseph T. Thomas, and this respondent, &c.

This respondent, for answer to said bill, or so much thereof as they are advised are necessary and material to be answered, say that they admit that prior to July 12th, 1869, there was a railroad corporation organized and existing under the general laws of the State of Indiana, called the Indianapolis, Crawfordsville & Danville Railroad Co., and was vested with full corporate power to locate, construct, and

467 operate a line of railroad from Indianapolis through the counties of Hendricks, Boone, Montgomery, Fountain, and Warren, to the western boundary of the State of Indiana.

This defendant says it has no knowledge as to whether the said Indianapolis, Crawfordsville and Danville Railroad Co. was vested with the corporate power to borrow money and issue bonds secured by mortgage upon the said line of railroad, or as to whether it had power to consolidate its stock with connecting lines of railroad lying in another State, or as to whether the said Indianapolis, Crawfordsville & Danville Railroad Co. had *had* become indebted to divers corporations and persons in the sum of one million five hundred thousand dollars, as charged in said bill, but leaves to complainants to make such proof thereof as they are or may be advised is material.

This defendant further says that it admits the execution of the

468 mortgage by the company last aforesaid, as charged in complainants' bill. It admits the creation and organization of the Danville, Urbana, Bloomington & Pekin Railroad Co., as charged in complainants' bill, and its authority to issue bonds and execute a mortgage, as charged in complainants' bill. It admits its capacity to lease and purchase other lines of railway, and also to consolidate its stock with those of any connecting lines of railroad in any other State.

The defendant admits that the Danville, Urbana, Bloomington & Pekin Railroad Co., on the first day of April, 1869, executed a certain mortgage, as charged in complainants' bill, to the Farmers' Loan & Trust Co., for the purpose of securing the issue of two thousand bonds, of one thousand dollars each, as charged in complainants' bill, and that said two thousand bonds were issued by that company last aforesaid, but whether in the usual course of business or not this defendant

469 has no means of determining, and therefore leaves complainant to make such proof as they may deem material.

Defendant further says that it has no means of knowing whether said bonds so issued and outstanding are unpaid or not, and therefore leaves complainant to the proof of the fact.

This defendant admits the consolidation of Danville, Urbana, Bloomington & Pekin Railroad Co. with the Indianapolis, Crawfordsville & Danville Railroad Co., as charged in complainants' bill, admits that the consolidated railroad co. was called the Indianapolis, Bloomington & Western Railroad Co., and that it assumed all the debts, liabilities, and obligations of the two original companies.

Defendant admits that on the 1st day of October, 1869, the Indianapolis, Bloomington & Western Railroad Co. executed to the Farmers Loan & Trust Co. a mortgage or deed of trust, whereby it conveyed to the Farmers' Loan & Trust Co. the railway of the Indianapolis,
470 Bloomington & Western Railway Co., as charged in complainants' bill, to secure the issue of five thousand bonds, as charged in complainants' bill, and that said mortgage was recorded, as charged in said complainants' bill, but defendant has no knowledge as to whether the Indianapolis, Bloomington & Western Railway Co. did use said bonds, or any or either of them, in taking up the issue of one million five hundred thousand of the bonds of Indianapolis, Crawfordsville & Danville Railroad Co., or that they issued and put in circulation one million five hundred thousand of the bonds last aforesaid for corporate use, and in order to provide additional equipments and machinery for the operation of said road; and defendant has no knowledge as to whether the two million of the Danville, Urbana, Bloomington & Pekin Railroad Co., heretofore specified, was ever surrendered or exchanged for any portion of the bonds provided for by the mort-
471 gage of Oct. 1st, 1869, but leaves complainant to make such proof as they may be advised is material.

Defendant denies that the entire amount of bonds issued under the provision of the mortgage last aforesaid only amount in the aggregate to three millions and no more, that the remaining two millions of such issue is still in the custody of Indianapolis, Bloomington & Western Railroad Co.

Defendant admits that on the 1st day of Oct., 1870, the Indianapolis, Bloomington & Western Railway Co. did execute a mortgage to William Denison and Benj. E. Smith, as charged in complainants' bill, upon the entire railway extending from Indianapolis westward to Pekin, as charged in complainants' bill, but it denies the legality or authority of the company last aforesaid to make or execute such mortgage, and it avers that such mortgage was not executed for the purpose of borrowing money for the equipment, operation, and use of said railway, but
472 it admits that the same was recorded as charged in said bill.

Defendant admits that the Indianapolis, Bloomington and Western Railway Co. did utter and put in circulation, but not in the usual course of business and for value, its so-called second-mortgage bond, in the aggregate amounting to one million five hundred thousand, dated on the 1st day of Oct., 1870, payable twenty years from date; admit that said one million five hundred thousand of second-mortgage bonds still remain outstanding and in the hands of divers persons and corporations and still remain unpaid, but this defendant denies that the same constitute a legal and valid indebtedness against the company aforesaid to the full amount of principal and unpaid interest. Defendant admits that on the 28th day of June, 1872, there was a corporation

of the State of Illinois called the Havana, Mason City, Lincoln and Eastern Railway Co., being formed by a consolidation of a company of the same name with the Monticello Railroad Co., as charged in complainants' bill, and that the said Havana, Mason City, Lincoln &
473 Eastern Railway Co. granted and conveyed all its line of railway with all its franchises, liabilities, and privileges to the Indianapolis, Bloomington and Western Railway Co., and that said Indianapolis, Bloomington and Western Railway Co., in order to borrow money for the purpose of constructing, maintaining, and operating its line of railroad from Champaign, in Champaign County, thence to White Heath, in Piatt County, thence to Clinton, in De Witt County, thence Lincoln, in Logan County, thence to Mason City and Havana, in Mason County, thence westerly to the Mississippi River, and also from the said town of White Heath, by way of Monticello, in Piatt County, thence to Decatur, in Macon County, executed to Wm. Dennison and Robert Turner their certain mortgage, conveying to the said Dennison & Turner in trust all that portion of said line of railway acquired by purchase and conveyance from the Havana, Mason City, Lincoln and Eastern Railway Co., in length about two hundred and fifteen miles, together with all
474 the franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind and nature used or connected with the operation of said line of railroad, including all rents, reservations, reversions of every nature, and including all the property between said terminal points which the said railway co. then owned or might thereafter acquire; the said indenture or trust-deed being in trust to secure the payment of the principal and interest of five thousand and five hundred bonds of said railway co., each for the sum of one thousand dollars, bearing date July 1st, 1872, payable to bearer on the first day of July, 1912, as charged in complainants' bill, the proceeds of said bonds to be exclusively used in the building, equipment, maintaining, and operating said line of railroad from Champaign west to the Mississippi River, and from White Heath to Decatur as aforesaid.

Defendant admits that the said Indianapolis, Bloomington and Western Railway Co. has negotiated and put in circulation three thou-
475 sand five hundred of said bonds, numbering from one to three thousand five hundred, inclusive, and defendant avers that it is the holder and owner of five of said bonds, with interest coupons thereto attached, which it acquired by purchase and in due course of negotiation, but this defendant expressly denies that the remaining two thousand of the said five thousand five hundred of said bonds have been duly or legally issued, hypothecated, or negotiated, but, on the contrary thereof, it avers that said two thousand bonds was issued and hypothecated in violation of the duties and trusts created by said trust-deed, and in fraud of the rights and equities of the holders and owners of the first three thousand five hundred of said bonds; that, to wit, no portion of said road lying and being between Havana and the Mississippi River has been built and constructed in accordance with the trust under which said bonds were issued, and that by reason thereof the value of said three thousand five hundred bonds has been greatly impaired.

476 This defendant, further answering, says that the money arising from the sale and hypothecation of said two thousand bonds has been by the said Indianapolis, Bloomington and Western Railway Co. fraudulently diverted and misapplied, in violation of the duties and trusts devolving upon said railroad co., and said railroad co. has used

a large portion of the same in purchasing real estate and equipments for said main line, extending from Indianapolis to Pekin, thereby building up and enhancing in value the mortgage securities aforesaid on said main line, to the injury and detriment of said three thousand five hundred bondholders, secured by a mortgage on that portion of said road between Champaign and the Mississippi River and White Heath and Decatur.

This defendant, further answering, says that it admits that the principal office of said consolidated company was at Urbana, but it does not know whether all the meetings of the shareholders, &c., was held there or not. It admits that said company, prior to the 8th day of
477 August, and even up to the 1st of July, 1872, possessed only a small amount of equipments compared with its present ownership. It admits that it has purchased and acquired since the 1st of July, 1872, a large amount of personal property, consisting of engines, cars, tools, machinery, material, supplies, and that the value of such personal property now owned and possessed by it amount, in aggregate, to one million five hundred thousand dollars, and that the same should be and is held as personal property, and defendant avers that the same or principal part thereof was purchased by the sale and hypothecation of said two million dollars of extension bonds.

The defendant avers that said personal property so acquired with the proceeds of said extension bonds is not subject to the lien of the first and second mortgage upon said main line from Indianapolis to Pekin. Defendant admits that the creditors of the Indianapolis, Bloomington and Western Railway Co. were threatening said personal property and equipments with executions, &c., and that the said Indianapolis,
478 Bloomington and Western Railway Co. had become indebted by way of notes, acceptances, adjusted accounts, and other obligations to a large amount, and that on the 16th day of November, A. D. 1874, the company executed a certain trust conveyance or mortgage of all and singular its chattels and personal property therein more specifically described to Joseph T. Thomas, embracing therein all and singular the personal property of every kind and description in any manner belonging to said corporation, the said trust mortgage being executed in trust and for the benefit and payment of such creditors as held the notes, acceptances, and obligations of said company not included in the bonded issues in said bill mentioned, and defendant avers that at the time of the execution of said trust-deed by the said company said railroad co. was indebted to this defendant, and still is indebted, upon certain promissory notes to the amount of, to wit, twenty-five thousand dollars, and that said notes are secured by said
479 chattel mortgage so executed by said company to the said Thomas as aforesaid—this defendant having notified the said Thomas and all persons concerned of its acceptance of the said mortgage security. Defendant admits the default of payment the coupons or mortgage warrants as charged in said bill for the October payment, 1874; also admits the default in the payment of the interest on the extension bonds, but says that only three thousand five hundred of said bonds constitute a just debt against said corporation

Defendant further avers that the said railroad co. used the proceeds arising from the sale of the extension bonds to pay the interest on the first and second mortgage bonds upon the main line as aforesaid, and that by reason thereof this defendant and the other owners of the extension bonds aforesaid are equitably entitled to be subrogated to the amount, to wit, three hundred thousand dollars, diverted from the

trust aforesaid, and applied to the payment of the interest aforesaid, and that the same should have priority over the principal and
480 subsequently accruing interest. This defendant denies that complainants have loaned the sum of eight hundred and sixty-five thousand dollars to said railroad co., and that the same has been used in the payment of interest, as charged in complainants' bill; denies that complainant is entitled to be subrogated to said morfgage securities on main line or any part thereof.

This defendant, further answering, says that the said Indianapolis, Bloomington and Western Railway Co. issued large amounts of fictitious bonds, and that the same are now held by parties having notice thereof, to wit, one million on the main line and two million on the extension line of said road, and that by reason thereof said bonds so fictitiously issued as aforesaid are fraudulent and void, and should be canceled.

Defendant for a further answer says that since the filing of complainants' bill herein the complainants, and each of them, have, by the judgment and consideration of the district court of the United States
481 within and for the southern district of New York, been adjudged bankrupts, said district court then and there having jurisdiction, as appears of record in said court, and said proceeding has never been reversed, vacated, or set aside, but is still in full force, and that under said proceedings in bankruptcy all the rights, property, both real and personal, choses in action of every kind, has been, including the subject-matter of complainants' bill, transferred to assignee, and that because thereof there is an infirmity in said proceeding, and said complainants are not entitled to the relief sought.

This defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other cause or thing in the complainants' said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all of which matter and things this defendant is
482 ready and willing to aver, maintain, and prove as this hon. court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges, &c.

In testimony whereof this defendant has signed this answer by its president and cashier, and caused its corporate seal to be hereto fixed.

Pres.

Cash.

HENRY & PENWELL,
Sol's for Def't.

(Indorsed:) Filed March 30, 1876. Wm. H. Harrison, clerk.

483 *Answer of Danville B. & T. Co. to X bill of F. L. & T. Co.*

In the circuit court, March term, 1876.

STATE OF ILLINOIS,
De Witt County, ss:

The answer of the Danville Banking and Trust Company, on' of the defendants, to the cross-bill of the Farmers' Loan & Trust Company now depending and undetermined in said court:

This defendant, for answer to said cross bill, or so much thereof as it is advised is material to be answered, answering, says:

That it admits the filing of said original bill by the said Malcom C.

Turner and others against the Indianapolis, Bloomington & Western Railway, as charged in complainants' bill, and this defendant refers to its answer to said original bill, and asks that the same may be taken and made a part of the answer of this defendant to said cross-bill.

This defendant admits that on the 1st day of October, 1870, the Indianapolis, Bloomington & Western Railway Co. executed its certain other trust-deed or mortgage to Dennison and Smith, as charged in complainants' bill, to secure the issue of one million five hundred
484 thousand dollars of bonds of even date with said mortgage, due twenty years after date, with interest at the rate of eight per cent. currency, interest payable on the 1st day January and July of each year.

But this defendant denies that said bonds were sold in due course of negotiation, but, on the contrary thereof, avers that the issuing of said bonds was not necessary for the building, construction, maintenance, or equipment of said railroad, and that the same were fraudulently issued in order to create a fictitious indebtedness upon said road.

This defendant, for further answer, says that it admits the corporate existence of the Havana, Mason City, Lincoln & Eastern Railway Co., and that it conveyed its property and franchises, as charged in complainants' bill, to Indianapolis, Bloomington & Western Railway Co., and that it executed on the 28th of June, 1870, to William Dennison and Robert Turner a certain mortgage on said railroad and franchises so conveyed to it by the Havana, Mason City, Lincoln & Eastern Railway Co. on all its property, franchises, and equipments on said portion of said road lying between Champaign and the Mississippi River,
485 and between the town of White Heath and Decatur, in trust to secure five thousand five hundred bonds, of one thousand dollars each, bearing date July 1st, 1872, and payable to bearer July 1st, 1912, in gold, with interest at seven per cent. per annum, interest payable on the 1st day of January and July of each year, which said mortgage was duly recorded, &c., in all the counties through which said extension passes; that there was duly issued and negotiated thirty-five hundred of said bonds, and that the same are now outstanding, and a valid subsisting lien upon said extension line; but this defendant denies that the remaining two thousand of bonds, numbering from thirty-five hundred to fifty-five hundred, are a legal liability upon said company, or that the same was issued and negotiated in due course of business, but, on the contrary thereof, charges that said two thousand bonds were issued by said company in fraud of the rights of the first thirty-five hundred holders of said bonds, and in violation of the duties and trusts created by the making of said mortgage, said bonds having *the making of said mortgage, said bonds having* been specifically ap-
486 propriated for the building of said extension line from Champaign to the Mississippi River, and from White Heath to Decatur, as aforesaid, the same having been fraudulently issued and hypothecated for funds with which to build up, maintain, and equip the main line from Indianapolis to Pekin, in violation of the charter of said company, the trust aforesaid, and the constitution of the State of Illinois, all of which said bondholders so taking said bonds by way of hypothecation as aforesaid had notice.

This defendant admits that the principal office of the Indianapolis, Bloomington & Western Railroad Co. since its organization has been kept at the city of Urbana, and that since the 8th day of August, 1870, and since the 28th day of June, 1872, the Indianapolis, Bloomington & Western Railway Co. has acquired a large amount of personal property,

consisting of rolling stocks, tracks, machinery, and supplies, amounting in the aggregate to one million five hundred thousand dollars.

And defendant avers that the same, or the principal part thereof, was purchased with the proceeds of said extension bonds so issued, sold, and hypothecated as aforesaid, and in violation of the trust under which said bonds were issued as aforesaid.

487 Defendant admits that the creditors of the Indianapolis, Bloomington & Western Railway Co. claim that the mortgages are not liens upon the property accrued since the 8th day of August, 1870, and defendant avers that under and by virtue of the constitution of the State of Illinois, said rolling stock, machinery, and supplies are personal property, and that the making of, acknowledgement, and recording of said mortgages by the Indianapolis, Bloomington & Western Railway Co. constitute no lien upon the same, and that said mortgage is not constructive notice of any lien on personal property under the constitution of the State of Illinois.

This defendant denies that the principal office of the said Indianapolis, Bloomington & Western Railway Co. is located in the city of New York. It admits that the Indianapolis, Bloomington & Western Railway Co. have become and now are indebted by way of notes, acceptances, and other obligations outside of its bonded debt; but defendant says it has no means of knowing, and is not advised as to, the extent of the floating debt, but that suits have been commenced in the

488 United States circuit court and in the circuit courts in the States of Indiana and Illinois.

Defendant admits that in the month of January, 1875, that by collusion, &c., the Indianapolis, Bloomington & Western Railway Co. has suffered default, and that judgment for nearly a million of dollars has been entered against it, and that the rolling stock and equipments of the road are threatened to be executed.

Defendant admits that in November, 1874, the Indianapolis, Bloomington & Western Railway Co. made a mortgage to Joseph T. Thomas, in trust on all its personal property, to secure the floating indebtedness, and avers that the same is valid and a paramount lien on the chattels and personal property of the company.

But this defendant denies that the Indianapolis, Bloomington & Western Railway Co. is in collusion with the complainants in the original bill, or *to* any other person, but on the contrary thereof, avers that said chattel mortgage was made in good faith, and that it is a paramount lien on any and all of the personal property of the Indianapolis, Bloomington & Western Railroad Co., but defendant expressly denies

489 that the mortgage in complainants' cross-bill, or either of them, *or* any liens whatever upon said personal property, or any part thereof. Defendant avers that at the time of making said chattel mortgage it was, and ever since has been, the owner and holder of promissory notes executed by the Indianapolis, Bloomington and Western Railway Co., amounting in the aggregate to more than twenty thousand dollars, and that the same is now due from the said railway co. to this defendant, and that the same is secured by said chattel mortgage, so executed by said railway co., to the said Thomas as aforesaid.

Defendant admits the failure of said railway co., as charged in said cross-bill; admit that complainants in the original bill are not entitled to be subrogated to the amount of money loaned by them to the Indianapolis, Bloomington & Western Railway Co.; admit that complainant has never been called upon to take possession or sell the property, as alleged in said cross-bill.

Defendants admit that the entire line of railway both in In-
490 diana and *and* Illinois has always been operated as a unit, and as one entire line, and that the equipments have never been appropriated to any part of the line; defendant admits and insists that over one million dollars of the money derived from the extension bonds has been used for the purchase of equipments, betterments of the original line from Indianapolis to Pekin, in fraud of the trust so created as aforesaid, and of the extension bondholders, by means of which various claims of creditors have been complicated; defendant admits that there ought to be an account and adjustment of the various liens, and also a foreclosure and sale of the property.

Defendant admits that on the 18th day of November, 1874, by collusion between the Indianapolis, Bloomington & Western Railway Co. and complainants in the original bill, a decretal order was passed sequestering the railroad, franchises, and property in the State of Illinois and placing the same in the hands of a receiver, and that the same is now in the hands of a receiver; but it expressly denies that it was the
491 duty of said complainant in said cross-bill to file said cross-bill, or that it has legal capacity to take and execute said trust, said complainant being a corporation created and existing under the laws of the State of New York, and by its charter having no power to execute said trust or to hold the legal title to said property.

Defendant says that it has no knowledge as to whether complainants in the original bill paid any installments of interest or not, but it has since to the proposition of said complainant in said cross-bill that complainants in the original bill are in equity estopped from setting up such a loan as a purchase of the coupons, or to claims to be subrogated to the securities of the mortgage.

Defendant insists that said chattel mortgage is a first and paramount lien on the rolling stock and personal property. Defendant, as to the other matter and things in said bill charged, says that it has no knowledge or information upon the subject, and therefore it neither admits nor denies the same, but leaves the complainant to make such
492 proof as it may advised is necessary or material, and having fully answered, this defendant prays to be hence dismissed from said cross-bill with its reasonable costs and charges.

HENRY & PENWELL,
Sol's for Def't.

(Endorsed:) Filed March 30, 1876. Wm. H. Harrison, cl'k.

493 STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of McLean County, greeting:

We command you to summon Amasa J. Merriman, Edwin C. Brewer, Mary Gilmore, John Gilmore, John Lamont, John S. Gillespie, John T. Danley, James Rayburn, jr., Wells Pumphrey, Robert McCart, administrator of all and singular the goods and chattels, rights and credits which were of Frank Brendle deceased; John Davis, William Murray, Adam Murray, Chalton D. Walters, Oliver Pease, Calvin Crocker, Edwin Bayliss, Silas Walters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, William J. Rhodes and Aaron C. Rhodes, administrator of all and singular the goods and chattels, rights and credits which were of John H. S. Rhodes, deceased, & J. J. Devalon, who are all impleaded with Malcom C. Turner et al., if he shall be found

in your county, personally to be and appear before the circuit court of De Witt County on the first day of the next term thereof, to be holden at the court-house in Clinton, in said De Witt County, on the 3rd Monday in March next, to answer unto The Farmers' Loan & Trust
494 Company in its certain cross-bill of complaint to foreclose a mortgage filed in said court on the chancery side thereof; and have you then and there this writ, with an endorsement thereon, showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court and the judicial seal thereof, at his office in Clinton, in said De Witt County, this 1st day of February, A. D. 1876.

[SEAL.] WM. H. HARRISON, *Clerk.*

STATE OF ILL'S,
McLean County:

Executed this writ this 28th day of February, A. D. 1876, by reading and delivering a true copy of the same to Mary Gilmore, John Gilmore, John Lamont, Adam Murray, Chalton D. Walters, Silas Walters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis.

JAMEL GOODHERT, *Sheriff.*
By JOHN S. MELCHI, *Deputy.*

STATE OF ILLINOIS,
McLean County:

Further executed this writ 6th day of March, A. D. 1876, by reading and delivering a true copy of the same to John Davis.

JAMES GOODHEART, *Sheriff.*
By JOHN P. MELCHI, *Deputy.*

STATE OF ILLINOIS,
McLean County:

495 Have further executed this writ this 10th day of March, 1876, by reading and delivering a true copy of the same to J. Merriman, Edwin C. Brewer, Wells Pumphrey, John S. Gillespie, James Rayburn, jr., Robert McCart, Oliver Pease, William J. Rhodes, and Aaron C. Rhodes. The following named defendant not found in my county to wit, John T. Danley, William Maury, Calvin Crocker, Edwin Bayliss, and J. J. Devalin.

JAMES GOODHEART, *Sheriff.*
By JAMES KEVAL, *D'p'ty.*

STATE OF ILLINOIS,
DeWitt County, ss:

The people of the State of Illinois to the sheriff of Coles County, greeting:

We command you to summon Isaac Tillottson, impleaded with Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner & Joseph S. Decker, copartners, doing business under the name, firm, & style of Turner Brothers; The Indianapolis, Bloomington & Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, Joseph T. Thomas, William Baum, William T. Sandusky, Amos Conoway, Edward Goggle, Christian Grove,
William R. Arthur, Ellen Wright, administratrix of all and singu-
496 lar the goods and chattels, rights, and credits which were of Zachariah Wright, deceased; The city of Champaign, Antye Raub, administratrix of all and singular the goods and chattels, rights and

credits which were of John Raub, deceased; Jesse W. Richards, Michael Schwartz, Silas F. White, S. Bartley Rodebaugh, William O. Smith, Lewis Gooden, Charles D. Webster, Benjamin M. Davis, et al., if he shall be found in your county, personally to be and appear before the circuit court of De Witt county, on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County on the third Monday in March next, to answer unto The Farmers' Loan & Trust Company, in its certain cross-bill of complaint to foreclose a mortgage filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this 19th day of February, A. D. 1876.

WM. H. HARRISON, *Clerk*,
By THOMAS W. WHEELER, *Deputy*.

497 STATE OF ILLINOIS,
Coles County:

I have duly served the within by reading and delivering a true copy of the same to Isaac Tillotson this 26th day of February, 1876.

GEORGE MOORE, *Sheriff*,
JAMES B. KING, *Dept.*

Filed this 10th day of Mar., 1876.

WM. H. HARRISON, *Clerk*.

STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the coroner of De Witt County, greeting:

We command you to summon Lyman Barrett, Dowry Thompson, William R. Arthur, & Ellen Wright, administratrix of all and singular the goods and chattels, rights, and credits which were of Zachariah Wright, deceased, who are impleaded with Malcom C. Turner et al., if they shall be found in your county, personally to be and appear before the circuit court of De Witt County on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County, on the 3rd Monday in March next, to answer unto The Farmers' Loan & Trust Company, in its certain cross-bill of com-
498 plaint to foreclose a mortgage in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this 1st day of February, A. D. 1876.

[SEAL.] WM. H. HARRISON, *Clerk*.

STATE OF ILLINOIS,
De Witt County:

I have duly served the within by reading and delivery a copy of the same to Lyman Barrett and a copy of the same to Drury Thompson. The within named William R. Arthur and Ellen Wright not found in my county this day of , 187 .

E. THOMAS, *Coroner*.

Filed this 2 day of March, 1876.

WM. H. HARRISON, *Clerk*.

STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of Piatt County, greeting:

499 We command you to summon Amos Conoway and Edward Goggle, impleaded with Malcom C. Turner et al., if they shall be found in your county, personally to be and appear before the circuit court of De Witt County, on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County on the 3rd Monday in March next, to answer unto The Farmers' Loan & Trust Company in its certain cross-bill of complaint to foreclose a mortgage filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County this 1st day of February, A. D. 1876.

[SEAL.] WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
Piatt County:

I have duly served the within by reading and delivery a copy of the same to Amos Conoway and Edward Goggle this 4th day of March, 1876.

E. P. FISHER, *Sheriff.*

500 STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of De Witt County greeting:

We command you to summon Malcom C. Turner, James Turner, Thomas C. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners under the firm name of Turner Brothers, The Indianapolis, Bloomington & Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas, if they shall be found in your county, personally to be and appear before the circuit court of De Witt County on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County, on the 3rd Monday in March next, to answer unto The Farmers' Loan and Trust Company in its certain cross-bill of complaint for relief, &c., filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this
501 7 day of December, A. D. 1875.

[SEAL.] WM. H. HARRISON, *Clerk,*
By THOMAS W. WHEELER, *Deputy.*

STATE OF ILLINOIS,
De Witt County:

I have duly served the within by reading and delivering a copy of the same to John C. Short, who is one of the directors of the said Indianapolis & Western Railway Company, the president of the said

company not being found in said county and none of other within named defendants being found in my county, this 7 day of December, 1875.

LYMAN BARRETT, *Sheriff.*

Filed this 11 day of March, 1876.

WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of De Witt County, greeting:

We command you to summon John T. Danly, who is impleaded with Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, & Joseph S. Decker, copartners, doing business under the name, firm, and style of Turner Brothers; The Indianapolis, Bloomington & Western Railway Company; William Dennison, Benjamen E. Smith, Robert Turner, Joseph Thomas, William Baum, William T. Sandusky, Amos Conoway, Edward Goggle, Christian More, William R. Arthur; Ellen Wright, administratrix of all and singular the goods and chattels, rights and credits which were of Zachariah Wright, deceased; the city of Champaign; Antye Raub, administratrix of all and singular the goods and chattels, rights & credits which were of John Raub, deceased; Isaac Tillotson, Michael Schwartz, S. Bradley Rodebaugh, Jesse M. Richards, Silas F. White, William O. Smith, Lewis Gordon, Charles D. Webster, Benjamin M. Davis, James M. Davis, Charles W. Davies, Amasa J. Merriman, Edwin C. Brewer, Mary Gilmore, John Gilmore, John Lamont, John S. Gillespie, James Rayburn, jr., Wells Pumphrey; Robert McCart, administrat*rix* of all and singular the goods & chattels, rights, & credits which were of Frank Brende, deceased, et al., if he shall be found in your county, personally to be and appear before the circuit court of De Witt County on the first Monday of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County, on the third Monday in March, A. D. 1876, to answer unto The Farmers' Loan & Trust Company in its certain cross-bill of complaint to foreclose a mortgage filed in said court, on the chancery side thereof, and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this 19th day of February, A. D. 1876.

[SEAL.] WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
De Witt County:

Not found, this 20th day of March, 1876.

LYMAN BARRETT,
Sheriff,
B' J. S. BROWN, *D'p'ty.*

Filed this 20th day of March, 1876.

WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of Champaign County, greeting:

We command you to summon Christian Grove, William R. Arthur, Ellen Wright, administratrix of all and singular the goods and chattels, rights and credits which were of Zachariah Wright, deceased; the city of Champaign, Antye Raub, administratrix of all and singular
504 the goods and chattels, rights and credits which were of John Raub, deceased; Isaac Tillotson, Jesse M. Richards, Michael Schwartz, Silas F. White, S. Bartley Rodebaugh, William O. Smith, Lewis Gordon, Charles D. Webster, Benjamin M. Davis, James M. Davies, Charles W. Davies, S. H. Busey, S. T. Busey, & W. R. Earkart, impleaded with Malcom C. Tuner et al., if they shall be found in your county, personally to be and appear before the circuit court of De Witt County on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County, on the 3rd Monday in March next, to answer unto The Farmers' Loan & Trust Company in its certain cross-bill of complaint to foreclose a mortgage filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this 1st day of February, A. D. 1876.

[SEAL.] WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
Champaign County, ss:

I have duly served this writ on the within named Michael
505 Schwartz, Silas F. White, S. Bartley Rodebaugh, William O. Smith, Lewis Gordon, Charles D. Webster, Benjamin M. Davies, S. H. Busey, S. T. Busey, and Antye Raub, administratrix, &c., by reading and delivery a true copy hereof to each of them, the 8th day of February, 1876; also served this writ on the within-named city of Champaign, by reading and delivery a true copy hereof to Joshua Dickinson, mayor of said city, this 12th day of February, 1876. The within-named Christian Grove, William R. Arthur, Ellen Wright, administratrix, &c., Isaac Tilotson, Jesse M. Richards, James M. Davies, Charles W. Davies, and W. R. Earheart not found in my county.

Februa'y 12, 1876.

J. D. JOHNSON, *Sheriff,*
O. C. RITTENHOUSE, *Deputy.*

Filed this 18th day of Feb., 1876.

WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
De Witt County, ss:

The people of the State of Illinois to the sheriff of De Witt County, greeting:

We command you to summon The Indianapolis, Bloomington and Western Railway Company, The Farmers' Loan and Trust Com-
506 pany, William Dennison, Benjamin E. Smith, Robert Turner,

Joseph T. Thomas, Malcom C. Turner, James Turner, Thomas C. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, if they shall be found in your county, personally to be and appear before the circuit court of De Witt County on the first day of the next term thereof, to be holden at the court-house, in Clinton, in said De Witt County, on the fourth Monday in August next, to answer unto Thomas Denny, Josiah B. Blossom, and John T. Adriance in their certain cross-bill of complaint for injunction, &c., filed in said court, on the chancery side thereof; and have you then and there this writ, with an endorsement thereon showing in what manner you shall have executed the same.

Witness Wm. H. Harrison, clerk of said circuit court, and the judicial seal thereof, at his office, in Clinton, in said De Witt County, this 14th day of June, A. D. 1875.

[SEAL.] WM. H. HARRISON, *Clerk.*

STATE OF ILLINOIS,
De Witt County:

The within-named defendants not found in my county, this 10th day of August, 1875.

LYMAN BARRETT, *Sheriff.*

(Indorsed:) Filed this 10th August, 1875.
WM. H. HARRISON, *Clerk.*

507 And afterwards, to wit, on Wednesday, the 19th day of July, at the June term of the circuit court of the United States for the southern district of Illinois, in the year A. D. 1876, the following proceedings were had, and entered of record in said cause, to wit:

508 *Order taking jurisdiction.*

In the circuit court of the United States, southern district of Illinois.
In chancery.

MALCOLM C. TURNER & OTHERS
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY & others. } Bills & cross-bills.

And now, 19th July, 1876, this cause coming on for hearing, on the motion of the Danville Banking and Trust Company to remand the case to the circuit court of DeWitt County, in the State of Illinois, and upon the motion of The Farmers' Loan and Trust Company that this court do take jurisdiction of this cause, the said Turner Brothers and the Indianapolis, Bloomington and Western Railway Company in no wise appearing; The Farmers' Loan and Trust Company appearing by J. Augustus Johnson, R. E. Williams, and J. D. Campbell; the said The Danville Banking and Trust Company appearing by Henry, its solicitor, and the Paris & Danville Railway Company appearing by A. J. Gallagher, its attorney, and the court being fully advised in the premises, doth order and adjudge the said motion to remand
509 be, and the same is hereby, overruled, and that the said motion that this court do take jurisdiction of the cause be, and the same is hereby, sustained.

510 *Answer of F. L. & T. Co. to X-bill of C. W. Smith.*

UNITED STATES OF AMERICA:

In the United States circuit court for the southern district of Illinois, January term, A. D. 1877.

MALCOLM C. TURNER ET AL.
v.
INDIANAPOLIS, BLOOMINGTON & WESTERN Railroad Company et al. } Bills in equity.

Cross-bill of—

CHARLES W. SMITH
v.
INDIANAPOLIS, BLOOMINGTON & WESTERN Railroad Company et al.

And now comes the Farmers' Loan and Trust Company, one of the respondents to said cross-bill, and saving and reserving to itself all just right of exception to the insufficient and erroneous statements in the said cross-bill, yet for answer to the same or to so much and such parts thereof as this respondent is advised it is material or necessary for it to make answer unto, answering, says:

I. That it is true, as stated in the said cross-bill, that there was a railroad corporation organized and existing under the laws of the
511 State of Indiana, called the Indianapolis, Crawfordsville & Danville Railroad Company, with powers as stated in the said cross-bill.

II. This respondent admits that there was duly created by the laws of Illinois, and existing under said laws, another corporation, called the Danville, Urbana, Bloomington, and Pekin Railroad Company, with the powers as stated in said cross-bill.

III. This respondent admits that the said two above-named corporations, that is to say, the Indianapolis, Crawfordsville & Danville Railroad Company, of the State of Indiana, and the Danville, Urbana, Bloomington & Pekin Rail Company, of the State of Illinois, being the owners of lines of railroad connecting at the State line, did, as thereto authorized by their charters and the laws of Indiana and of Illinois, consolidate their stock property and franchises and become one corporation, under the name of the Indianapolis, Bloomington & Western Railway Company, which said last-named corporation, by virtue of such consolidation, became duly vested with the property, rights, and franchises of said two original corporations, as is in and by said cross-bill stated.

IV. As to whether, prior to the twenty-ninth day of June, A. D. one thousand eight hundred and seventy-two, there was a corpora-
512 tion of the State of Illinois called the Havana, Mason City, Lincoln, & Eastern Railway Company, being formed by a consolidation as is in and by said cross-bill stated, this respondent does not know of its own personal knowledge, but believes the same to be true, and this respondent does not of its own knowledge know of the franchises vested in said corporation, but presumes said franchises are properly set out in said cross-bill. And as to whether the said last-named corporation did convey to the said Indianapolis, Bloomington & Western Railway Company its partially constructed line of railway, with all

of its corporate franchises, &c., as is in and by said cross-bill alleged, this respondent does not know of its own knowledge, and therefore neither admits nor denies the same.

V. As to the statement in said cross-bill that the said Havana, Mason City, Lincoln, & Eastern Railway Company duly made and delivered to William Denison and Robert Turner a deed of trust or mortgage, by which it conveyed to the said Dennison and Turner its line of railway, franchises, &c., as is in and by the said cross-bill alleged, this respondent does not know of its own knowledge, and therefore neither admits nor denies the same.

VI. And as to whether the five thousand five hundred bonds
513 were issued and sold or disposed of as is in and by the said cross-bill alleged, this respondent does not know, and therefore neither admits nor denies the same.

VII. And as to the provisions of said trust deed, if any such was made, this respondent does not know, and therefore neither admits nor denies the same.

VIII. And as to whether default was made in the payment of the interest falling due on said five thousand five hundred bonds, if they were ever issued, as is in and by said cross-bill alleged, this respondent does not know, and therefore neither admits nor denies the same.

IX. And as to whether said Denison has resigned his trust as trustee under said deed of trust, if he ever was such trustee, and as to whether the complainant in the said cross-bill was duly elected his successor in trust; and as to whether the said Robert Turner has been duly adjudicated a bankrupt, as is in and by the said cross bill alleged, this respondent does not know, and therefore neither admits nor denies the same.

X. This respondent admits it to be true that on the prayer of the original bill in this case the circuit court of the county of De Witt and State of Illinois did by a receiver take possession of the railroad
514 of the said Indianapolis, Bloomington & Western Railway Company, including the extension from Havana to Champaign and to Decatur.

XI. This respondent says it does not know the facts of its own knowledge, but from information and belief it denies that a large amount, or any amount, of the bonds secured by the mortgage on the said extension or the proceeds thereof were used in the purchase of equipment, cars, engines, and machinery for the line of railroad of the said Indianapolis, Bloomington & Western Railway Company, but this respondent, upon information and belief, avers the truth to be that the cars, machinery, and equipment of said Indianapolis, Bloomington & Western Railway Company that were taken into the possession of the receiver were purchased by and were the property of the said Indianapolis, Bloomington & Western Railway Company before it purchased said extension; and this respondent denies that said extension or the said plaintiff in the said cross-bill has any right or equity in the equipment or machinery of the said Indianapolis, Bloomington & Western Railway Company; but this respondent says, as it is advised and believes the truth to be, all said equipment is covered by the two mortgages or deeds of trust made to this respondent, as set out in the cross-bill of this respondent.

515 XII. And this respondent says that it is true this respondent, by its cross-bill in this case, does claim a right in and prior lien on all said equipment of the Indianapolis, Bloomington and Western

Railway Company, but this respondent does not claim any right or interest in the said extension line or lines of railroad, but only in what is called the main line, that is, the line running from the city of Pekin, Illinois, to the city of Indianapolis, in the State of Indiana. And this respondent here expressly denies, from information and belief, that the said extension, as it is called, or the said complainant, as representing the mortgage on said extension, has any legal or equitable right, title, or claim in and to any of the rolling-stock or machinery of the said Indianapolis, Bloomington & Western Railroad Company.

And now having, as it is advised, fully answered the said cross-bill of the said Charles W. Smith, this respondent prays that it may be hence dismissed, with its costs, &c.

FARMERS' LOAN & TRUST COMPANY,
By WILLIAMS, BURR & CAPEN,
Its Solicitors.

J. AUGUSTUS JOHNSON,
J. D. CAMPBELL, &
WILEY & PARKER,
Of Counsel.

516 I, Roswell G. Rolston, being first duly sworn, upon oath state that I have read the foregoing answer, and that I am the president of The Farmers' Loan and Trust Company, the respondent therein; that all the facts stated in said answer to be true are true in fact, and the statements therein made on information and belief I believe to be true.

R. G. ROLSTON.

Subscribed and sworn to before me this 16' day of November, A. D. 1876.

[L. S.] EDWARD L. OLIVER,
U. S. Commissioner for the Southern Dist. of New York.

(Endorsed:) Filed Nov. 21, 1876. J. A. Jones, clerk.

517 *Ans. of Thomas et al. to X-bill of F. L. & T. C.*

United States circuit court, southern district of Illinois.

The answer of Joseph T. Thomas and Benjamin E. Smith, to the cross-bill and amended cross-bill of the Farmers' Loan and Trust Company:

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bills contained, for answer thereunto, or to so much or to such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

These defendants admit that the Farmers' Loan and Trust Company is a corporation created by and a citizen of the State of New York, and that prior to July 12, 1869, there was a railroad corporation organized and existing under the laws of the State of Indiana, called the Indianapolis, Crawfordsville and Danville Railroad Company, which corporation was clothed with the powers and privileges set out in the said bills, and admit, as therein alleged, that prior to July 12, 1869, the said railroad company had become and was indebted to divers
518 persons and corporations in the sum of $1,500,000, evidenced by certain coupon bonds, secured by first mortgage on said en-

tire line of railroad belonging to said railroad corporation; that the Danville, Urbana, Bloomington and Pekin Railroad Company was created a corporation by virtue of an act of the general assembly of the State of Illinois, approved February 28th, 1867, and was thereby endowed with powers and privileges set out in the said cross-complainants' bills, and that the said Danville, Urbana, Bloomington and Pekin Railroad Company, on the 1st day of April, 1869, signed, sealed, executed, acknowledged, and delivered to the said Farmers' Loan and Trust Company its certain trust deed or mortgage, by which said mortgage or deed of trust the said last-mentioned corporation conveyed to the said Farmers' Loan and Trust Company all and singular the property and franchises particularly set out in the said cross-complainants' bills, and that the said mortgage was made to secure the payment of 2,000 bonds for the sum of $1,000 each, bearing interest at the rate of 7 per cent. per annum, payable semi-annually, said principal and
519 interest being payable in gold coin to the Farmers' Loan and Trust Company, or bearer, in the city of New York, the principal of said bonds being due and payable to the said Farmers' Loan and Trust Company, or bearer, on the 1st day of April, 1909, and bearing date the 1st day of April, 1869, and said interest being payable on the 1st day of October and April of each and every year. And these respondents further admit that the said mortgage contained the provisions substantially as alleged in the said cross-complainants' bills, but whether the said mortgage was valid and legal, and whether the said Farmers' Loan and Trust Company could accept such conveyance and take the property alleged to be conveyed by it, these respondents neither admit nor deny, but leave such question to be established by evidence, and to the judgment of the court.

Further answering, they admit that the said two railroad companies above mentioned, by articles of consolidation bearing date the 12th day of July, 1869, consolidated their stock and property, and became one corporation under the name and style of the Indianapolis, Bloomington and Western Railway Company.

These respondents, further answering, say that the said line
520 of the Danville, Urbana, Bloomington and Pekin Railroad Company had no equipment of any consequence, and the said Indianapolis, Crawfordsville and Danville Railroad Company's line very little, at the date of such consolidation, and that up to and until 1873–'4 the said lines of railroad had a very meagre equipment and far from enough to adequately transact the business offered to them.

Further answering, these respondents admit that the said Indianapolis, Bloomington and Western Railway Company, after the consolidation aforesaid, made an alleged mortgage or deed of trust to the Farmers' Loan and Trust Company to secure the payment of 5,000 bonds of one thousand dollars each, dated on the same day with the said deed of trust, and payable to William Dennison, or bearer, in the city of New York, on the 1st day of October, 1909, principal and interest payable in gold, free of government tax, with interest warrants thereto attached, signed by the secretary, for the payment of interest thereon, at the rate of 7 per cent. per annum, payable in gold, and payable in New York, on the successive first days of October and April of each year; but whether the said railway company had power to make the said mortgage, or whether the said Farmers' Loan and Trust
521 Company had authority or power to accept such conveyance or take the property conveyed by the same, and whether it has a right to foreclose the said mortgage, these respondents do not know;

but these respondents say that they are informed and believe that of the said series of bonds under such alleged mortgage or deed of trust, not more than $3,000,000 of them have been issued, and that $2,000,000 of them are still in the custody of its agents and it' representatives.

Further answering, these respondents admit that the said indebtedness of the said Indianapolis, Crawfordsville and Da'ville Railroad Company was satisfied and extinguished, as shown in the said cross-complainants' bill, by the substitution in place of the same of an equal number of the said 5,000 bonds secured by the last-mentioned conveyance made by the consolidated company, the Indianapolis, Bloomington and Western Railway Company, to the said Farmers' Loan and Trust Company, and that the said bonds of such issue so used in satisfying the said indebtedness of the said Indianapolis, Crawfordsville and Danville Railway Company are included within the $3,000,000 which these respondents admit, as aforesaid, to have been issued.

522 These respondents also admit that on the 1st day of October, 1870, the said Indianapolis, Bloomington and Western Railway Company, being thereto duly authorized by resolution of its board of directors, duly made, executed, signed, sealed, acknowledged, and delivered to William Dennison and Benjamin E. Smith a certain other indenture of mortgage or deed of trust, conveying unto the said Dennison and Smith, as trustees, all and singular the entire railroad of the said grantor, extending from Indianapolis, in the State of Indiana, westwardly to Pekin, in the Sate of Illinois, through Crawfordsvill', in said first-mentioned State, and through Danville, Urbana, and Bloomington, in the said State of Illinois—altogether in length of railway track, about 214 miles, about 83 miles thereof being in the State of Indiana, and about 131 miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, and chattels used in or connected with the operation of said railway, including all rents, reservations, reversions of every nature and kind whatsoever, including all the property between said terminal points which the said grantor then had, owned, and possessed, or might
523 thereafter acquire, which said indenture or mortgage was duly filed for record in the various counties through which the said line of railroad is located.

These respondents, further answering, admit that the said last-mentioned indenture was made in trust to secure an issue of $1,500,000 of mortgage bonds of the said Indianapolis, Bloomington and Western Railway Company, the principal and interest payable in the city of New York, principal being payable 20 years from this date, and to bear interest at the rate of eight per cent., payable semi-annually, on the first days of January and July of each and every year, provided the first installment of interest should not be payable until the first day of July, 1871.

And your respondents admit that it was provided, among other things, in said indenture that in case default should be made in the payment of any interest on the said bonds secured thereby, according to the tenor and effect of the coupons thereto annexed, or in case of the default of payment of any of said bonds when the same should become due, without the consent of the holder or holders of said bonds, when such default should occur, said grantor within six months after such default, the said default still continuing, on the demand of the said trustees, should and would surrender to them, or to their agents,
524 actual possession of the said granted and demised railway premises, together with all the books, records, papers, accounts, and

money of said grantor and all manage'nd and control thereof, and all the expenses of taking, holding, managing, and operating said property, if possession thereof be so taken, should be paid from the income and profits thereof, and, in case of sale, from the proceeds of such sale, and apply the resid'e of said proceeds as is in and by said indenture provided; provided that *on* such demand for possession should be made by said trustee until they should be required by the holders of at least 1,000 of the said bonds then outstanding and unpaid.

And it was further provided therein that in case default should be made as aforesaid, and continue as aforesaid, it should be lawful for the said trustees, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, to sell said mortgaged property at public auction in the city of Chicago, in the State of Illinois, at such time as said trustees might appoint, they having demanded of the said grantor full payment of all money then in default, first having advertised the time and place of such sale; and on receipt of the purchase money to convey said property to the purchaser, and after deducting from the proceeds of all the expenses of the sale, all advances
525 and liabilities which might have been incurred by said trustees in operating, controlling, and maintaining such railway and prop-er'y and in managing its business affairs, and all payment of taxes, charges, assessments, and liens prior to the lien of the said last mentioned indenture on said premises, or any part thereof, as well as reasonable compensation for the services of said trustees, and app'y the residue in the payment of the interest and principal of said issue of bonds, secured by said indenture in the manner provided therein.

And it was furthermore provided, that if default should be made in the payment of half-yearly interest on any of the said bonds, and the warrent or coupon should be presented and their payment demanded, and said default should have so continued for six months after such default, and without the consent of the holder or holders of said bonds, or any part thereof, secured by such indenture, then all of said bonds should become immediately due and payable, anything in said bonds to the contrary notwithstanding, the said trustees might proceed to collect both principal and interest of all such outstanding bonds by foreclosure and sale of such property, or otherwise, as is in and by said last
526 mentioned indenture provided.

And further answering, these respondents admit and say that the said entire series of bonds which last mentioned indenture was given to secure were issued and put upon the market and negotiated for value in due course of business; and that the same, with large arrearages of interest thereof, and now a valid and outstanding debt of said Indianapolis, Bloomington and Western Railway Company, and are a valid lien on all the property and effects of the said railway company in the States of Indiana and Illinois.

These respondents, further answering, say that William Dennison, one of the said trustees, has, since the execution of said indenture, resigned his trust, and that under the provisions of said last mentioned indenture Joseph T. Thomas has been appointed, and is now acting as such trustee in his stead.

These respondents, further answering, admit that on the 28th day of June, A. D. 1872, the said Indianapolis, Bloomington and Western Railway Company purchased the line of railroad at that time the property of the Havana, Mason City, Lincoln, and Eastern Railway Company, and thereafter, on the same day, conveyed the said rail-
527 road so purchased to William Dennison and Robert Turner, by

deed of trust, to secure the payment of 5,500 bonds of the sum of $1,000 each, and interest thereon at the rate of seven per cent. per annum; and, further answering, they say that they understand that said William Dennison has died, and Charles W. Smith has been appointed as his successor, under the provision of said deed of trust.

On the sixteenth day of November, 1874, the said Indianapolis, Bloomington and Western Railway Company, by its president and secretary, duly authorized, did sign, seal, execute, acknowledge, and deliver a certain trust conveyance or mortgage of all and singular its chattels and personal property, therein more specifically described, to the defendant, Joseph T. Thomas, embracing therein all and singular the personal property of every kind, character, and description in any manner belonging to the said corporation.

The said trust mortgage being executed as security for the benefit, protection, and payment of all and singular such creditors as held the notes, acceptances, and obligations aforesaid, not including in the bonded issues hereinbefore described, but more specifically set out at large in said chattel mortgage.

And these respondents, further answering, say that the said
528 Indianapolis, Bloomington and Western Railway Company have made default in the payment of the interest of the mortgage of October 1, 1869, on the 1st day of October, 1874, and also made default in the payment of the semi-annual installments of interest due on the second series of bonds issued in the name of the Danville, Urbana, Bloomington, and Pekin Railroad Company, on the 1st day of October, 1874, and that the said railway company defaulted in the payment of the semi-annual installment of interest due in July, 1874, on the said bonds secured by deed of trust to William Dennison and Benjamin E. Smith, and on the bonds commonly called the extension bonds, secured by the mortgage to William Dennison and Robert Turner, on the 1st day of July, 1874. And these respondents show that no part of the several installments of interest due on the different bonded obligations have ever been paid by the said corporation, nor have any part thereof, but the same still remains in arrear, and constitutes an indebtedness against the said corporation, and a lien upon the property of the said company, according to the different legal and equitable priorities as they may be determined as a matter of law by the court, upon the
529 said several indentures of mortgage hereinbefore recited.

And, further answering, these respondents deny that the cross-complainant is entitled to the relief, or any part thereof, asked for in the said original and said amended cross-bill, and demand and pray the same advantage of this answer, as if they had pleaded or demurred to the said bills of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf sustained.

(Signed) JOSEPH T. THOMAS,
BENJAMIN E. SMITH,
By H. CRAWFORD,
Their Solicitor.

(Indorsed:) Filed November 10, 1876. J. A. Jones, clerk.

530 *Ans. of Turner & Smith to X-bill of F. L. & T. Co.*

United States circuit court, southern district of Illinois.

The answer of Robert Turner and Chas. W. Smith to the cross-bill and amended cross-bill of the Farmers' Loan and Trust Company.

These defendants, now and at all times hereafter, saving and reserv-

ing unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bills contained, for answer thereunto, or to so much or to such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

These defendants admit that the Farmers' Loan and Trust Company is a corporation created by and a citizen of the State of New York, and that prior to July 12, 1869, there was a railroad corporation organized and existing under the laws of the State of Indiana called the Indianapolis, Crawfordsville and Danville Railroad Company, which corporation was clothed with the power and privileges set out in the said bills, and admit, as therein alleged, that prior to July 12, 1869, the said railroad company has become and was indebted to divers persons
531 and corporations, in the sum of $1,500,000, evidenced by certain coupon bonds, secured by first mortgage on said entire line of railroad belonging to said railroad corporation; that the Danville, Urbana, Bloomington, and Pekin Railroad Company was created a corporation by virtue of an act of the general assembly of the State of Illinois, approved February 28th, 1867, and was thereby endowed with powers and privileges set out in the said cross-complainants' bills, and that the said Danville, Urbana, Bloomington and Pekin Railroad Company, on the first day of April, 1869, signed, sealed, executed, acknowledged, and delivered to the said Farmers' Loan and Trust Company its certain trust deed or mortgage, by which said mortgage or deed of trust the said last-mentioned corporation conveyed to the said Farmers' Loan and Trust Company all and singular the property and franchises particularly set out in the said cross-complainants' bills, and that the said mortgage was made to secure the payment of 2,000 bonds, for the sum of $1,000 each, bearing interest at the rate of 7 per cent. per annum, payable semi-annually, said principal and interest being payable in gold coin to the Farmers' Loan and Trust Company, or bearer, in the city of New York, the principal of said bonds being due and payable to the
531½ said Farmers' Loan and Trust Company, or bearer, on the 1st day April, 1909, and bearing date the 1st day of April, 1869, and said interest being payable on the first day of October and April of each and every year. And these respondents further admit that the said mortgage contained the provisions substantially as alleged in said cross-complainants' bills, but whether the said mortgage was valid and legal, and whether the said Farmers' Loan and Trust Company could accept such conveyance and take the property alleged to be conveyed by it, these respondents neither admit nor deny, but leave such question to be established by evidence and to the judgment of the court.

Further answering, they admit that the said two railroad companies above mentioned, by articles of consolidation bearing date the 12th of July, 1869, consolidated their stock and property, and became one corporation under the name and style of the Indianapolis, Bloomington & Western Railroad Company.

These respondents, further answering, say that the said line of the Danville, Urbana, Bloomington and Pekin Railroad Company
532 have no equipment of any consequence, and the said Indianapolis, Crawsfordsville and Danvilles Railroad Company's line very little, at any date of such consolidation, and that up to and until 1873–'74 the said lines of railroad had a very meagre equipment, and far from enough to adequately transact the business offered to them.

Further answering, these respondents admit that the said Indianapolis, Bloomington and Western Railway Company, after the consoli-

dation aforesaid, made an alleged mortgage or deed of trust to the Farmers' Loan and Trust Company to secure the payment of 5,000 bonds of $1,000 each, dated on the same day with the said deed of trust, and payable to William Dennison, or bearer, in the city of New York, on the 1st day of October, 1909, principal and interest payable in gold, free of government tax, with interest warrants thereto attached, signed by the secretary, for the payment of interest thereon, at the rate of 7 per cent. per annum, payable in gold, and payable in New York, on the successive first days of October and April of each year, but whether the said railway company had power to make the said mortgage, or whether
533 the said Farmers' Loan and Trust Company had authority or power to accept such conveyance or take the property conveyed by the same, and whether it has a right to foreclose the said mortgage these respondents do not know, but these respondents say that they are informed and believe that the said series of bonds under such alleged mortgage or deed of trust not more than 3,000,000 of them have been issued, and that 2,000,000 of them are still in the custody of its agents and its representatives.

Further answering, these respondents admit that the said indebtedness of the said Indianapolis, Crawfordsville and Danville Railroad Company was satisfied and extinguished, as shown in the said cross-complainants' bill, by the substitution in place of the same of an equal number of the said $5,000 bonds, secured by the last-mentioned conveyance made by the consolidated company, the Indianapolis, Bloomington & Western Railway Company, to the said Farmers' Loan and Trust Company, and that the said bonds of such issue so used in satisfying
534 the said indebtedness of the said Indianapolis, Crawfordsville and Dan'ille Railway Company are included within the $3,000,000 which these respondents admit, as aforesaid, to have been issued.

These respondents also admit that on the 1st day of October, 1870, the said Indianapolis, Bloomington and Western Railway Company, being thereto duly authorized by resolution of its board of directors, duly made, executed, signed, sealed, acknowledged, and delivered to William Dennison and Benjamin E. Smith a certain other indenture of mortgage or deed of trust, conveying unto the said Dennison and Smith, as trustees, all and singular the entire railroad of the said grantor, extending from Indianapolis, in the State of Indiana, westwardly to Pekin, in the State of Illinois, through Crawfordsville, in said first-mentioned State, and through Danville, Urbana, and Bloomington, in the State of Illinois, altogether, in length of railway track, about 214 miles, about 83 miles thereof being in the State of Indiana, and about 131 miles thereof in the State of Illinois, with all its franchises, equipments, property, lands, tenements, buildings, fixtures, machinery, goods, & chattels used in or connected with the operation of said railway, including
535 all rents, reservations, reversions of every nature and kind whatsoever, including all the property between said terminal points which the said grantor then had, owned, and possessed, or might thereafter acquire, which said indenture or mortgage was duly filed for record in the various counties through which the said line of railroad is located.

These respondents, further answering, admit that the last mentioned indenture was made in trust to secure an issue of $1,500,000 of mortgage bonds of the said Indianapolis, Bloomington and Western Railway Company, the principal and interest payable in the city of New York, principal being payable 20 years from their date, and to bear interest at the rate of eight per cent., payable semi-annually, on the first

days of January and July of each and every year, provided the first installment of interest should not be payable until the first day of July, 1871.

And your respondents admit that it was provided, among other things in said indenture, that in case default should be made in the payment of any interest on the said bonds secured thereby, ac-
536 cording to the tenor and effect of the coupons thereto annexed, or in case of the default of payment of any of said bonds when the same shall become due without the consent of the holder or holders of said bonds when such default should occur, said grantor, within six months after such default, the same default still continuing, on the demand of the said trustees, should and would surrender to them or their agent actual possession of the said granted and demised railway premises, together with all the books, records, papers, accounts, and money of said grantor, and all management and control thereof, and all the expenses of taking, holding, managing, and operating said property, if possession thereof *to* be so taken, should be paid from the income and profits thereof, and in case of sale from the proceeds of such sale *from the proceeds of such sale*, and apply the residue of said proceeds as is in and by said indenture provided; provided that no such demand for possession should be made by said trustee' until they should be required by the holders of at least $1,000 of the said bonds then outstanding and unpaid.

And it was further provided therein that in case *of* default should be made as aforesaid, and continue as aforesaid, it should be
537 lawful for the said trustees, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, to sell said mortgage property at public auction, in the city of Chicago, in the State of Illinois, at such time as said trustees might appoint, they having demanded of the said grantor full payment of all money then in default, first having advertised the time and place of such sale, and on receipt of the purchase money to convey said property to the purchaser, and after deduction from the proceeds of all the expenses of the sale, all advances and liabilities which might have been incurred by said trustees in operating, controlling, and maintaining such railway and property and in managing its business affairs, and all payment of taxes, charges, assessments, and liens prior to the lien of the said last-mentioned indenture on said premises or any part thereof, as well as reasonable compensation for the services of said trustees, and apply the residue in the payment of the interest and principal of said issue of bonds secured by said indenture in the manner provided therein.

And it is furthermore provided, that if default should be made
538 in the payment of half yearly interest on any of the said bonds and the warrant or coupon should be presented and their payment demanded, and said default should have so continued for six months after such default, and without the consent of the holder or holders of said bonds, or any part thereof, secured by said indenture, then all of said bonds should become immediately due and payable, anything in the said bonds to the contrary notwithstanding, the said trustees might proceed to collect both principal and interest of all such outstanding bonds by foreclosure and sale of such property or otherwise, as in and by said last-mentioned indenture provided.

And, further answering, these respondents admit and say that the said entire series of bonds, which last-mentioned indenture was given to secure, were issued and put upon the market and negotiated for value in due course of business, and that the same, with large arrear-

ages of interest thereof, are now a valid and outstanding debt of said Indianapolis, Bloomington and Western Railway Company, and are a valid lien on all the property and effects of the said railway company in the States of Indiana and Illinois, but whether the said mort-
539 gage is a first, or second, or third lien upon the property so mentioned these respondents do not undertake to say, and in that respect they neither admit the allegation made by the said complainants nor deny the same.

These respondents, further answering, say that William Dennison, one of said trustees, has, since the execution of said indenture, resigned said trust, and that under the provisions of said last mentioned indenture Joseph T. Thomas has been appointed, and is now acting as trustee in his stead.

These respondents, further answering, admit that previous to the 28th day of June, A. D. 1872, the Havana, Mason City, Lincoln and Eastern Railway Company and the Monticello Railroad Company, both corporations organized under the laws of the State of Illinois, consolidated their property, stock, and franchises under their charters and laws of Illinois, in due form of law, and gave to the consolidated company the name of the Havana, Mason City, Lincoln and Eastern Railway Company, and by such consolidation became one single corporation under the name aforesaid, and the said consolidated company by such consolidation became possessed of all the property and fran-
540 chises which before that time belonged to the said Monticello Railroad Company, and the said Havana, Mason City, Lincoln and Eastern Railway Company, which said property is described as follows:

The railroad track, lands, grounds, buildings and property, the road-bed, siding, switches, stations, depots, rights of way, and all rights, credits, and subscriptions which belonged to the said Monticello Railroad Company before and at the time of the said consolidation; the said line of railroad beginning at the city of Decatur, in the county of Macon, in the State of Illinois; running thence to the town of Monticello, in the county of Fayette; thence to the city of Champaign, in the county of Champaign; thence through the county of Vermillion to the junction of the Chicago, Danville and Vincennes Railroad, in the county of Iroquois, a distance of about 85 miles, all in the State of Illinois; and the railroad, tracks, lands, roads, grounds, buildings and property, the road-bed, sidings, stations, switches, depots, rights of way, and all rights, credits, subscriptions, and franchises which were of the said Havana, Mason City, Lincoln and Eastern Railway
541 Company before and at the time of the said consolidation.

The said Havana, Mason City, Lincoln and Eastern Railway, commencing at some point on the Mississippi River, thence running eastwardly to Havana, Mason County, Illinois; thence to Mason City in said Mason County, thence to the city of Lincoln, in Logan County, Illinois; thence to Clinton, De Witt County, Illinois; thence eastwardly to the east line of the State of Illinois.

Your orators would further show unto your honor, that on the 28th of June, A. D. 1872, the Indianapolis, Bloomington and Western Railway Company, a corporation doing business under the law of the States of Illinois and Indiana being a consolidated company, as hereinafter shown, as by law authorized, purchased from the said Havana, Mason City, Lincoln and Eastern Railway Company, all its property and franchises heretofore mentioned, being and including all the property and franchises of the said original Havana, Mason City, Lincoln and East-

ern Railway Company, and the said Monticello Railroad Company consolidated as aforesaid. And thereupon the said Havana, Mason City, Lincoln & Eastern Railway Company, by deed properly executed
542 and acknowledged, conveyed the said franchises and property to the said Indianapolis, Bloomington & Western Railway Company.

And these respondents say, that thereafter, on the same day, the said Indianapolis, Bloomington & Western Railway Company, as it was by law empowered to do, conveyed the property and franchises so purchased as aforesaid to William Dennison & Robert Turner, by deed of trust, executed and acknowledged in due and lawful form, to secure the payment of a certain issue of bonds of the number of 5,500, and of the sum of $1,000 each; said bonds to be signed by the president and secretary, and authenticated, when issued, by the certificate of the trustees, and numbered consecutively from one to fifty-five hundred bearing date July 1st, 1872, and payable to William Dennison or bearer in the city of New York on the first day of July, A. D. 1912; principal and interest being payable in gold coin of the United States of America, of equal standard value of the gold coin of the United States of America, free of government tax, with interest warrants thereto attached, signed by the secretary, for the payment of interest thereon at the rate of seven per cent. per annum in gold coin as aforesaid, on the
543 successive first days of July and January of each year; said principal and interest payable at the office or agency of the company, at the city of New York; and by such deed of conveyance the said railroad to be constructed and equipped, together with its appurtenances and its franchises, appendages, equipments, property, tools, income, and interests, which then belonged to or might hereafter appertain to said line of railroad, to secure the payment of said bonds and interest warrants, in consideration of all and singular the premises granted, have bargained, sold, and conveyed to William Dennison and Robert Turner, as trustees, and to their successors and assigns, all and singular the said railroad of the said Indianapolis, Bloomington and Western Railway Company, known as the western extension of the said Indianapolis, Bloomington and Western Railway Company, and described as follows: Commencing at the city Champaign, in the county of Champaign, State of Illinois; thence running to the town of White Heath, in the county of Fayette; thence by way of Clinton, in the county of De Witt, Lincoln, in the county of Logan, and Mason City, in the county of Mason, westwardly to the Mississippi River; and from the said town of White Heath by way of Monticello, in the county of Fayette, to the
544 city of Decatur, in the county of Macon, all in the State of Illinois; altogether being in length about 215 miles, together with all its franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every kind and nature used in connection with the operation of said line of railway, including the rents, reservations, and revenues of every nature or kind whatsoever, including all the property between said terminal points, which the said Indianapolis, Bloomington and Western Railway Company then had, owned, or purchased, or might thereafter acquire, own, or possess; and it was provided in and by said deed of trust that the said trustees should hold, use, and own the same sorely for the benefit and protection, and security of the persons and corporations who should hold and own the bonds described above, and for enforcing the stipulations of said company as to the said issue of bonds, and the disposal thereof, and securing the same, and the final payment thereof, in their intent and mean-

ing, whether contained in said bonds, or in the warrants attached to the same, or in the said deed.

And it was furthermore provided, that in case default should be made in the payment of and interest of the aforesaid bonds ac-
545 cording to the tenor of the coupons thereto annexed, or of the provisions thereof, or in case default should be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bonds when such default should occur, the said railway company covenanted and agreed that the said trustees, and their successors and assigns, within six months after such default shall have occurred, the same default still continuing, the said railway company, on demand of the trustees, for the time being, should and would surrender to them, or to their agent, the actual possession of the said railway and premises, together with all the books, records, papers, accounts, and moneys in the hands of the said railway company, and appertaining and belonging to the said railway company, properly on account of the said railway thereby demised, and all arrangements and control thereof, and that all the expenses of taking, holding, managing, and operating said property should thereafter be sold, then from the proceeds of the sale thereof, all such expenses might be paid from the sale of any personal property appertaining to said demised premises, as the said trustees might deem proper. And it is furthermore provided
546 that in case such default should be made as aforesaid, and continue as aforesaid, it should be lawful for the trustees, or their successors in trust, after entry, as aforesaid, or other entry, without entry, personally, or by agent or attorney, to sell and dispose of, to the highest bidder, for cash, all and singular, the premises and property thereby conveyed, or intended so to be, as an entirety, at public auction, in the city of Springfield, State of Illinois, at such time as said trustees may appoint, first having demanded of the said railway company full payment of all money in default, and also first having given sixty days' notice of such time and place of sale, and a full description of the property sold, by advertisements therein in three newspapers, one published in the State of Illinois, one in the city of New York, and one in the city of Indianapolis, Indiana; and upon such sale, and receiving the purchase-money therefor, to convey the same, by good and sufficient deed of conveyance, to the purchaser or purchasers thereof, and that such conveyance so made should convey all the right, title, interest, estate, and property of the said railway company of, in, and to the said road and premises, franchises, and property to the said purchaser, in fee simple, forever, and should be a perpetual bar, both in law and equity, against the said railway company, and their suc-
547 cessors and assigns, and against all persons claiming or to claim any interest in the said premises, or any part thereof, forever; and by said deed the trustees were instructed to deduct from the proceeds of sale the expenses of the sale and conveyance, and all advances and liabilities which might have been made or incurred, both in operating, controlling, and maintaining the said railway property, and managing its business and affairs while in possession, and all payments of taxes, charges, and assessments, as well as reasonable compensation for their services in that behalf, and to apply the proceeds of such sale to the payment of the interest of said $5,500,000 of bonds, or so many of them as should have been issued by the said railroad company, pro rata, until such interest should be paid, and afterwards to apply the remainder on the principal of said bonds, pro rata, until such principal should be paid.

And it was also provided that the trustees might in their discretion sell the said premises and property conveyed by said deed, as an entirety or any part thereof, and it was furthermore provided in and by said deed of trust, that if default should be made by said railway company in the payment of half yearly interest on any of said
548 bonds and the warrant or interest coupon should have been presented, and its payment be demanded, and such default should have continued for six months after such demand, without the consent of such holder of coupon or bond, then and thereupon the principal of all said bonds secured should be and become immediately due and payable. anything *to* said bonds to the contrary notwithstanding.

And these respondents would show that it was also provided in said deed of trust, that in case of the resignation or inability to act of the trustees aforesaid, that the board of directors of the said railway company might appoint a successor or successors to fill such vacancy, and such appointment by the board should invest the trustee or trustees so appointed with all the interest, estate, power, and authority in the premises & subject him or them to the same obligation hereby given to the said William Dennison & Robert Turner.

And these respondents further say that on the day of A. D.
187 , William Dennison, one of the trustees originally appointed by said deed of trust, resigned his trust, and that the said board of
549 directors of the said railway company in accordance with the said provisions of the said deed of trust, appointed Charles W. Smith as his successor, and that he duly accepted such appointment; and that the said indenture was duly recorded in all the counties of the State of Illinois through or in which the said property therein described and conveyed was situated, and as provided by the said indenture, and under the protection thereof. The said Indianapolis, Bloomington and Western Railway Company has either negotiated absolutely, or by way of hypothecation or security in the usual course of business, and for value all and singular the said $5,500,000 of bonds intended to be secured by the said conveyance.

And the said amount of obligations commonly known as extension bonds is now outstanding against the said corporation, either absolutely or by hypothecation, and no part of the same has ever been paid, cancelled, or retired by the said corporation.

On the sixteenth day of November, 1874, the said Indianapolis, Bloomington and Western Railway Company, by its president and secretary duly authorized, did sign, seal, execute, acknowledge and deliver a certain trust of conveyance or mortgage of all and
550 singular its chattels and personal property therein more specifically described, to the defendant Joseph T. Thomas, embracing therein all and singular the personal property of every kind, character, and description, in any manner belonging to the said corporation; the said trust mortgage being executed as security for the benefit, protection, and payment of all and singular such creditors as held the notes, acceptances, and obligations aforesaid, not included in the bonded issues heretofore described, but more specifically set out at large in said chattel mortgage.

And these respondents, further answering, say that from the proceeds of the sale and hypothecation of the said 5,500 bonds issued by the said Indianapolis, Bloomington and Western Railway Company for the equipment and construction of said extension, and secured by the said deed of trust, executed by the said railway company, conveying said railroad property purchased from the Havana, Mason City, Lin-

coln and Eastern Railway Company, to William Dennison & Robert Turner, or their successors and assigns, a large amount of money was diverted by the officers of said Indianapolis, Bloomington & Western Railway Company an' invested in equipment, property, fixtures, buildings, machinery, goods, & chattels, but principally in locomotive
551 engines and other rolling-stock for the use and behalf of the original main line of the said Indianapolis, Bloomington and Western Railway Company.

These respondents are not informed exactly as to the amount of money that was expended for the fund raised by the sale & hypothecation of the said 5,500 bonds upon equipment of the main line, but are advised and believe that a $1,000,000 and over was diverted to the use of the main line, and that a large amount of the locomotive engines, rolling-stock, fixtures, buildings, and machinery upon the main line were bought or constructed from the funds realized as aforesaid; and your orator shows unto your honor, and so charges, that the bondholders holding bonds secured under the said deed of trust to said Dennison and Turner have a right and are entitled to a first and paramount lien upon all such rolling-stock, equipment, buildings, fixtures, and machinery.

And these respondents, further answering, say that the said Indianapolis, Bloomington & Western Railway Company have made default in the payment of the interest of the mortgage of Oct. 1,
552 1869, on the first day of October, 1874, and also made default in the payment of the semi-annual instalments of interest due on the second series of bonds issued in the name of the Danville, Urbana, Bloomington and Pekin Railroad Company on the 1st day of October, 1874, and that the said railway company defaulted in the payment of the semi-annual installment of interest due in July, 1874, on the said bonds secured by deed of trust to William Dennison and Benjamin E. Smith, and on the bonds commonly called the extension bonds, secured by the mortgage to William Dennison and Robert Turner on the 1st day of July, 1874.

And these respondents show that no part of the several installments of interest due on the different bonded obligations have ever been paid by the said corporation, nor have any part thereof, but the same still remains in arrear and constitutes an indebtedness against the said corporation and a lien upon the property of the said company, according to the different legal and equitable priorities as they may be deter-
553 mined as a matter of law by the court, upon the said several indentures of mortgage hereinbefore recited.

And, further answering, these respondents deny that the cross-complainant is entitled to the relief, or any part thereof, asked for in the said original and said amended cross-bill, and demand and pray the same advantage of this answer as if they had pleaded or demurred to the said bills of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf sustained.

ROBERT TURNER,
CHARLES W. SMITH,
By H. CRAWFORD,
Their Solicitor.

(Endorsed:) Filed May 8, 1877. J. A. Jones, clerk.

(Indorsed:) Answer of Robert Turner and Charles W. Smith to cross-bill of Farmers' Loan & Trust Company. Crawford & McConnell, solicitors for respondents.

554 *Amendment to answer of F. L. & T. Co. to X-bill of Smith.*

In the circuit court of the United States, southern district of Illinois.
In chancery.

MALCOLM C. TURNER ET AL.
v.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company and others. } No.

The said Farmers' Loan and Trust Company, by leave of the court first had and obtained, files the following amendment to its answer heretofore filed herein to the cross-bill of Charles W. Smith, that is to say:

Further the said respondent avers that if the said sale of the said Havana, Mason City, Lincoln and Eastern Railroad and franchises was made as in the said cross-bill it is alleged was made, the same was null and void, and passed no title to the Indianapolis, Bloomington and Western Railway Company to such extension line, nor does the said trust-deed so executed by the said Indianapolis, Bloomington and Western Railway Company create any lien on the said extension property, nor any debt against the said railway company, because the said pretended purchase was against public policy, and directly contrary to
555 the charter of the said Indianapolis, Bloomington & Western Railway Company, which said charter expressly prohibits said company from purchasing, building, or consolidating with any other railroad, not being a continuation or constituent part of its line from Pekin to the east line of the State of Illinois, running east and west, or that might run north and south from one of the termini of said line, and that said extension, so called, runs east and west nearly parallel with the said main line, and not from either terminus thereof.

Wherefore the said respondent says that the said pretended purchase could not in law connect the said main line with the said extension as one property.

R. E. WILLIAMS,
WILEY & PARKER,
J. D. CAMPBELL,
Sols. for Farmers' Loan & Trust Company.

(Endorsed:) Filed May 8, 1877. J. A. Jones, clerk.

555¼ *Depositions of Ralston et al.*

Circuit court of the United States, southern district of Illinois.

The United States of America to Edward L. Owens, esq., 71 Wall street, New York City, N. Y., greeting:

We, reposing special confidence in your fidelity and provident circumspection, do hereby authorise and appoint you to take the testimony, in writing, of Roswell G. Rolston, Charles P. Babcock, Austin Corbin, Giles E. Tainter, Josiah B. Blossom, Henry T. Spaulding, Charles P. Choate, G. S. Moulton, Charles A. Newning, James B. Blossom, and Clark R. Griggs, whom you are authorized and required to bring before you at such time and place as you may designate and appoint for that purpose, and at such time and place you will proceed to examine under oath said witnesses, upon the interrogations hereunto annexed, at the

instance of Farmers' Loan and Trust Company in a cross-bill filed in a certain cause now pending and undetermined in our circuit court of the United States for the southern district of Illinois, before the judges thereof, wherein Malcom C. Turner et al. are complainants, and Indianapolis, Bloomington and Western Railway Company et al. are defendants. The annexed interrogatories, with the answers thereto, you will cause to be reduced to writing in the order in which they
555½ shall be proposed and answered, and will then cause the said depositions to be signed by the witnesses. At the foot thereof you will add a certificate, subscribed by yourself, stating that the said depositions were sworn to and subscribed by said witnesses, stating the time and place when and where the said examination was taken; which said examination of said witnesses so taken, with your certificate thereto attached, you will send directed to our clerk of our circuit court of the United States for the southern district of Illinois, sealed, with the names of the parties litigant endorsed thereupon, without delay, together with this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Springfield, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 101st year.

[SEAL.] J. A. JONES, *Clerk.*

(Endorsed:)

I hereby consent that the testimony, taken under this commission, may be used in the case between the same parties, now pending in the United States circuit court for the district of Indiana.

HENRY CRAWFORD, *Solicitor.*

(Endorsed:) No. 4746. Circuit court United States, southern district of Illinois. Malcolm C. Turner et al. vs. Indianapolis, Bloomington and Western Railway Company et al. Dedimus Potestatum. Filed March 10th, A. D. 1877. J. A. Jones, clerk. Williams, Burr & Capen, sol'rs for compl'ts X-bill.

556 *Deposition of Rosewell G. Rolston.*

First interrogatory. Please state your name, age, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Rosewell G. Rolston; age, forty-four; residence, New York City; and occupation, president of The Farmers' Loan and Trust Company.

Second interrogatory. Please state what connection, if any, you have with The Farmers' Loan and Trust Company, and how long have you had such connection.

Ans. To the second interrogatory he saith: I am president of The Farmers' Loan and Trust Company, and have been for the last twelve years.

Third interrogatory. Please state, if you know, how many bonds, and of what description, were issued, put on the market, and sold under a certain deed of trust made by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, secured by a deed of trust on its railroad and property to the said Farmers' Loan and Trust Company; said deed being dated April 1st, 1869. Also state, if you know, how many of said bonds are still outstanding and unpaid, and give your means of information. State also, if you know, of any default of
557 payment on the interest on said bonds, and how you know.

Ans. To the third interrogatory he saith: I have no knowledge of any being put on the market and sold. I signed, as trustee, and delivered two thousand bonds of one thousand dollars each, numbered 1 to 2000. I have no knowledge of any of them having been paid. I was informed by bondholders that the interest on the bonds was in default.

Fourth interrogatory. Please state who now controls a majority of said bonds, if you know, and how you know the fact, and how long such person or persons have controlled said bonds.

Ans. To the fourth interrogatory he saith: A majority of the bonds are deposited with the Central Trust Company, of this city, subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, as appears by a certificate issued by said trust company, which certificate I have seen.

Fifth interrogatory. If any demand has been made on The Farmers' Loan and Trust Company by any one to foreclose said trust-deed, please state when and by whom such demand was made.

558 And to the fifth interrogatory he saith: Demand was made by Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, in writing, in the name of the holders of the first mortgage bonds to the amount of $1,177,000. Such demand was dated March 13, 1876, and was for the foreclosure of the mortgage made to The Farmers' Loan and Trust Company by the said railroad company, dated April 1st, 1869.

Sixth interrogatory. Please state, if you know, how many bonds were issued and put on the market and sold of the bonds of the Indianapolis, Bloomington and Western Railway Company, secured by a deed of trust made by said Indianapolis, Bloomington and Western Railway Company to the said Farmers' Loan and Trust Company, dated the first day of October, A. D. 1869, and how many of said bonds are still outstanding and unpaid, and if any default was made in the payment of the interest on said bonds, and how you know it, and when such default was made.

And to the sixth interrogatory he saith: I have no knowledge of any being put on the market and sold. I signed and delivered, as trustee, three thousand bonds, of one thousand dollars each, numbered from 1 to 3000. I have no knowledge of any of them having been

559 paid. I was informed by bondholders that the interest on the bonds was in default October, 1874.

Seventh interrogatory. If any of said series of bonds remain unsold, please state how many and what number and where they now are.

Ans. To the seventh interrogatory he saith: Of the 5,000 bonds secured by said mortgage 3,000 were signed by said trustee and delivered. The remaining 2,000 are in the possession of The Farmers' Loan and Trust Company, the trustee, and unis'ued, of which 1,000 were signed by the trustee, and the signatures subsequently cancelled, all of said bonds being for 1,000 dollars each.

Eighth interrogatory. State, if you know, who controls a majority of said bonds as were sold, and how long such person or persons has had control of them.

Ans. To the eighth interrogatory he saith: The certificate referred to in my answer to the fourth interrogatory contains also the statement that a majority of the Indianapolis, Bloomington and Western Railway Company bonds are deposited with the Central Trust Com-

560 pany, subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom.

Ninth interrogatory. If any demand has been made on The Farmers'

Loan and Trust Company to foreclose said last-named deed of trust, please state when and by whom.

Ans. To the ninth interrogatory he saith: A demand was made by Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, in the name of the holders of the first mortgage bonds of the Indianapolis, Bloomington and Western Railway Company, to the amount of $1,633,000, to foreclose said mortgage, bearing date October 1st, 1869. The date of the demand is March 13th, 1876, and by the estate of P. F. W. Peck, holder of $100,000 in said bonds, dated May 24th, 1875.

Tenth interrogatory. State, if you know, how many bonds were issued and sold under a second deed of trust made by said Indianapolis, Bloomington and Western Railway Company to William Dennison and Benjamin E. Smith, and how many of said bonds are still outstanding; and if any default was made in the payment of interest on said last issue of bonds please state as fully as you know.

561 Ans. To the tenth interrogatory he saith: I have no knowledge in relation to the matter inquired of in this interrogatory.

R. G. ROLSTON.

Sworn to before me this 6th day of March, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Further examination under the commission adjourned to the 7th day of March, 1877, at No. 71 Wall street.

No. 71 WALL STREET,
March 7th, 1877.

Pursuant to adjournment examination proceeds:

Deposition of Josiah B. Blossom.

First interrogatory. Please state your name, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Josiah B. Blossom; my age is 39 years; my residence is the city of Brooklyn,
562 in the State of New York; I am not now in active business, having retired a few years ago from the cotton commission business.

Second interrogatory. Please state, if you know, how many bonds were issued and sold under each of the following deeds of trust:

1. A deed of trust by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, to The Farmers' Loan and Trust Company, dated April 1, 1869, to secure 2,000 bonds of $1,000 each.

2. And state also, if you know, how many bonds were issued and sold by the Indianapolis, Bloomington and Western Railway Company, and secured by a deed of trust made by said Indianapolis, Bloomington and Western Railway Company to The Farmers' Loan and Trust Company, and dated October 1, 1869, to secure an issue of 5,000 bonds of $1,000 each.

3. And state if you know how many bonds were issued and sold, made by the said Indianapolis, Bloomington and Western Railway Company, secured by a trust deed to William Dennison and Benjamin E. Smith, dated October 1, 1870, to secure an issue of 1,500 bonds of $1,000 each.

And to the second interrogatory he saith: I know that two thousand bonds of $1,000 each were issued under deed of trust dated 1st

563 April, 1869, made by the Danville, Urbana, Bloomington & Pekin Railroad Company to The Farmers' Loan and Trust Company, and sold for value.

I know that 3,000 bonds of $1,000 each were issued under deed of trust dated 1st October, 1869, made by the Indianapolis, Bloomington and Western Railway Company to The Farmers' Loan and Trust, and sold for value.

I know that 1,500 bonds of $1,000 each were issued under deed of trust, dated 1st October, 1870, made by the Indianapolis, Bloomington and Western Railway Company, to Benjamin E. Smith and William Dennison, and sold for value.

My sources of knowledge are ownership of many of the aforesaid bonds, personal inspection of a large majority of each issue in the vaults of the Central Trust Company of New York, and by personal inspection on or about the 6th day of November, 1874, of the books of the said Indianapolis, Bloomington and Western Railway Company, at Indianapolis, in which books the sales of the entire number of each series of the aforesaid bonds are recorded.

Third interrogatory. State, if you know, how many of each series of bonds are still outstanding, and if any default has been made in the payment in the interest on them, or any of them. State all you know about such default.

564 Ans. To the third interrogatory he saith: I have been informed and fully believe that the whole issue of 2,000 Danville, Urbana, Bloomington and Pekin Railroad Company bonds are still outstanding; that the whole issue of 3,000 Indianapolis, Bloomington and Western Railway Company consolidated first-mortgage bonds are still outstanding; and the whole issue of 1,500 Indianapolis, Bloomington, and Western Railway Company second-mortgage bonds are still outstanding.

The books of the said company, on or about the 6th day of November, 1874, showed them to be still outstanding, and I have personally seen large majorities of each of the three issues of bonds in the vaults of the said Central Trust Company. I know that default has been made in the payment of interest coupons on the said three series of bonds as follows:

On Danville, Urbana, Bloomington & Pekin bonds, October 1, 1874. On Indianapolis, Bloomington, and Western Railway 1st mortgage bonds, October 1, 1874. On Indianapolis, Bloomington and Western Railway 2d mortgage bonds, July 1, 1874. I know it by ow'ership of many of the defaulted coupons which I caused to be presented for payment, and which were not paid, and by having seen notarial protest certifying that the coupons from the said three series of bonds had been presented for payment and payment was refused by said railway company.

565 Fourth interrogatory. Who owns or controls said outstanding bonds or a majority of them, if any one, and how long has such party or parties so controlled the same, and where are said bonds now and for what purpose?

Ans. To the fourth interrogatory he saith: Majorities of each of said series of bonds are controlled by Austin Corbin, Giles E. Tainter, and myself, the duly appointed foreclosure committee, and have been so controlled from and since about the month of March, 1876, which said bonds are now on deposit in the Central Trust Company of New York, subject to the order of said committee, to be by them used for the foreclosure of the said railway company and appurtenances under proceed

ings now pending in the United States circuit court for the district of Indiana, and for the southern district of Illinois, and for the purposes of reorganization, 1,448 Danville, Urbana, Bloomington & Pekin R. R. bonds; 2,019 Indianapolis, Bloomington & Western first-mortgage bonds; and 1,055 bonds secured by the second mortgage of said railway company are now on deposit in said Central Trust Company.

Fifth interrogatory. If any demand has been made on the
566 trustees under said mortgages or deeds of trust to foreclose the same, please state if you know when and by whom such demand was made?

Ans. To the fifth interrogatory he saith: Demand was made on the Farmers' Loan and Trust Company on the 18th day of March, 1876, to foreclose said two first mentioned mortgages or deeds of trust and said demand was so made in writing by the aforesaid committee in behalf of holders of majorities of each class of bonds. No demand was made on Benjamin E. Smith and William Dennison, trustees of the deed of trust, dated 1st October, 1870, to foreclose said deed of trust by a majority of holders of said second-mortgage bonds, or as far as I know by any holders of said bonds for the reason that the holders of said second-mortgage bonds, for cause distrusted and repudiated said Smith and Dennison as their trustees. I was a member of a committee appointed by the said second-mortgage bondholders on the 20th day of October, 1874, and know the foregoing to be a fact, which said committee composed of myself, Thomas Denny, and John P. Adriance, did begin a foreclosure suit on behalf of holders of a majority of said second-mortgage bonds in January, 1875, in the State courts of Indiana and Illinois, which foreclosure suits were discontinued by said committee in April, 1876, the
567 holders of said second-mortgage bonds having come under a joint foreclosure and reorganization contract, dated December 20th, 1875, with the holders of bonds secured by the prior mortgage.

JOSIAH B. BLOSSOM.

Subscribed and sworn to before me this 7th day of March, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

Deposition of Austin Corbin.

First interrogatory. Please state your name, residence, and occupation?

Ans. To the first interrogatory he saith: My name is Austin Corbin; my residence is the city of Brooklyn, State of New York; by occupation I am a banker.

Second interrogatory. Please state, if you know, how many
568 bonds were issued and sold under each of the following deeds of trust?

1. A deed of trust by the Danville, Urbana, Bloomington and Pekin Railroad Company of Illinois to the Farmers' Loan and Trust Company, dated April 1, 1869, to secure 2,000 bonds of $1,000 each.

2. And state also, if you know, how many bonds were issued and sold made by the Indianapolis, Bloomington and Western Railway Company and secured by a deed of trust made by the said Indianapolis, Bloomington and Western Railway to the Farmers' Loan and Trust Company, and dated October 1, 1869, to secure an issue of 5,000 bonds of $1,000 each.

3. And state, if you know, how many bonds were issued and sold made

by the said Indianapolis, Bloomington and Western Railway Company secured by a trust-deed to William Dennison and Benjamin E. Smith, dated October, 1870, to secure an issue of 1,500 bonds of $1,000 each.

Ans. To the second interrogatory he saith: I know that 2,000 bonds of $1,000 each were issued under deed of trust, dated the first day of April, 1869, made by the Danville, Urbana, Bloomington and Pekin Railroad Company to the Farmers' Loan and Trust Company, and sold for value.

I know that 3,000 bonds of $1,000 each were issued under deed of trust, dated October 1st, 1869, made by the Indianapolis, Bloom-
569 ington and Western Railway Company to the Farmers' Loan and Trust Company, and were sold for value.

I know that 1,500 bonds of $1,000, were issued under deed of trust, dated October 1st, 1870, made by the Indianapolis, Bloomington and Western Railway Company, to Benjamin E. Smith and William Dennison, and were sold for value.

My sources of knowledge are ownership of many of the aforesaid bonds, personal inspection of a large majority of each issue in the vaults of the Central Trust Company of New York, and by having had correspondence with the holders of a large amount of the remainder.

Third interrogatory. State if you know how many of each series of bonds are still outstanding, and if any default has been made in the payment in the interest on them, or any of them; state all you know about such default.

Ans. To the third interrogatory he saith: I have been informed, and fully believe that the whole issue of 2,000 Danville, Urbana, Bloomington & Pekin Railroad bonds are still outstanding; that the whole issue of 3,000 Indianapolis, Bloomington and Western Railway Company consolidated first-mortgage bonds are still outstanding, and that the whole issue of 1,500 Indianapolis, Bloomington and Western Railway Company second-mortgage bonds are still outstanding. I
570 know it, because I have seen large majorities of each of the three issues in the vaults of the Central Trust Company aforesaid, and I have had correspondence with the holders of a large number of the remainder of said bonds. I know that default has been made in the payment of interest coupons on the said three series of bonds, as follows: On the Danville, Urbana, Bloomington and Pekin bonds, October 1st, 1874; on the Indianapolis, Bloomington and Western Railway, first-mortgage bonds, October 1st, 1874; and on the Indianapolis, Bloomington and Western Railway Company second-mortgage bonds, July 1, 1874. I know it by being the holder and owner of some of the defaulted coupons, which I caused to be presented for payment, and which were not paid, and by having seen the notarial protests certifying that coupons from the said three series of bonds had been presented for payment and payment refused by said railway company.

Fourth interrogatory. Who owns or controls said outstanding bonds, or a majority of them; and how long has such party or parties so controlled the same; and where are said bonds now, and for what purpose?

571 Ans. To the fourth interrogatory he saith: Majorities of each of the said series of bonds are controlled by myself, Giles E. Tainter, and Josiah B. Blossom, the duly appointed foreclosure committee, and have been so controlled since about the month of March, 1876, which said bonds are now on deposit in the Central Trust Company of New York, subject to the order of said committee, to be by them used for the foreclosure of the said railway and appurtenances under pro-

ceedings now pending in the U. S. circuit court for the district of Indiana, and for the southern district of Illinois; and for the purposes of reorganization 1,448 Danville, Urbana, Bloomington and Pekin Railroad bonds; 2,019 Indianapolis, Bloomington and Western first-mortgage bonds; and 1,055 second-mortgage bonds of said last mentioned company, all of $1,000 each, are now on deposit in the said Central Trust Company.

Fifth interrogatory. If any demand has been made on the trustees under said mortgages or deeds of trust to foreclose the same, please state, if you know, when and by whom such demand was made.

Ans. To the fifth interrogatory he saith: Demand was made of the Farmers' Loan and Trust Company on the 13th day of March, 1876, to foreclose said two first mentioned deeds of trust, and said demand was so made in writing by the aforesaid committee on behalf of hold-
572 ers of a majority of each of said series of bonds.

A. CORBIN.

Subscribed & sworn to before me March 7, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Deposition of Giles C. Tainter.

First interrogatory. Please state your name, residence, and occupation.

Ans. To the first interrogatory he said: My name is Giles E. Tainter; residence, New York City; occupation, railroad broker.

Second interrogatory. Please state, if you know, how many bonds were issued and sold under each of the following deeds of trust:

1. A deed of trust by the Danville, Urbana, Bloomington and Pekin Railroad Company of Illinois, to the Farmers' Loan and Trust Company, dated April 1st, 1869, to secure 2,000 bonds of $1,000.

2. And state also, if you know, how many bonds were issued
573 and sold made by the Indianapolis, Bloomington and Western Railway Company, and secured by a deed of trust made by said Indianapolis, Bloomington and Western Railway Company to the Farmers' Loan and Trust Company, and dated October 1st, 1869, to secure an issue of 5,000 bonds of $1,000 each.

3. And state also, if you know, how many bonds were issued and sold, made by the said Indianapolis, Bloomington and Western Railway Company secured by a trust deed to William Dennison and Benjamin E. Smith, dated October 1st, 1870, to secure an issue of 1,500 bonds of $1,000 each.

Ans. To the second interrogatory he saith: I know that 2,000 bonds of $1,000 each were issued under deed of trust dated 1st April, 1869, made by the Danville, Urbana, Bloomington and Pekin Railway Company to the Farmers' Loan and Trust Company, and sold for value.

I know that 3,000 bonds of $1,000 each were issued under deed of trust dated 1st October, 1869, made by the Indianapolis, Bloomington and Western Railway Company to the Farmers' Loan and Trust Company, and sold for value.

I know that 1,500 bonds of $1,000 each were issued under deed of trust dated 1st October, 1870, made by the Indianapolis, Bloomington and Western Railway Company to Benj. E. Smith and William
574 Dennison, and sold for value.

My sources of knowledge are having owned some of aforesaid bonds, personal inspection of a large majority of each issue in the vaults

of the Central Trust Company of New York, and by having correspondence with the holders of a large amo'nt of remainder.

Third interrogatory. State, if you know, how many of each series of bonds are still outstanding and if any default has been made in the payment of the interest on them or any of them. State all you know about such default?

Ans. To the third interrogatory he saith: I have been informed and believe that the whole issue of 2,000 Danville, Urbana, Bloomington and Pekin Railway Company bonds; 3,000 Indianapolis, Bloomington and Western Railway Company bonds (consolidated first mortgage), and also the whole issue of 1,500 Indianapolis, Bloomington and Western Railway Company second-mortgage bonds are still outstanding.

I know, because I have seen large majorities of each of the three issues in the vaults of the Central Trust Company above mentioned, and I have had correspondence with the holders of many of the remainder of said bonds.

I know that default has been made in the payment of interest
575 coupons on the said three issues of bonds as follows: On the Danville, Urbana, Bloomington and Pekin bonds 1st October, 1877; on the Indianapolis, Bloomington and Western Railway first-mortgage bonds 1st October, 1874; on the Indianapolis, Bloomington and Western Railway Company second-mortgage bonds 1st July, 1874.

I know it by having seen notarial protests certifying that coupons from the said three series of bonds had been presented for payment and payment refused by said railway company.

Fourth interrogatory. Who owns or controls said outstanding bonds or a majority of them, if any one, and how long has such party or parties so controlled the same, and where are said bonds now and for what purpose?

Ans. To the fourth interrogatory he saith: Majorities of each of the said series of bonds are controlled by Austin Corbin, myself, and Josiah B. Blossom, the duly appointed foreclosure committee, and have been so controlled since about the month of March, 1876, which said bonds are now deposited in the Central Trust Company of New York, subject to the order of said committee, to be by them used for the foreclosure of the said railway company and appurtenances under proceedings now
pending in the U. S. circuit court for the district of Indiana and
576 the southern district of Illinois for the purposes of reorganization; 1,448 Danville, Urbana, Bloomington and Pekin Railway bonds; 2,019 Indianapolis, Bloomington and Western first-mortgage bonds; and 1,055 Indianapolis, Bloomington and Western second-mortgage bonds are now on deposit in said Central Trust Company.

Fifth interrogatory. If any demand has been made on the trustees under said mortgages or deeds of trust to foreclose the same, please state if you know when and by whom such demand was made.

Ans. To the fifth interrogatory he saith: Demand was made of the Farmers' Loan and Trust Company on the 13th March, 1876, to foreclose said two first mentioned deeds of trust, and said demand was so made in writing by the aforesaid committee on behalf of holders of majorities of each of the classes of bonds.

GILES E. TAINTER.

Subscribed & sworn to before me this 7th day of March, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

577 *Deposition of Henry F. Spaulding.*

First interrogatory. You will please state your name, age, residence, and occupation?

Ans. To the first interrogatory he saith: My name is Henry F. Spaulding; aged fifty-nine; I reside in New York City, and by occupation I am president of the Central Trust Company of New York.

Second interrogatory. Please state, if you know, where a majority of several series of bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, under a deed of trust to the Farmers' Loan and Trust Company, of New York, dated April 1st, 1869, to secure an issue of 2,000 bonds of $1,000 each, now are, and how long they have been there, and by whom the same are controlled, and for what purpose said bonds are where they are now? State also what past-due coupons, if any, are on said bonds unpaid?

Ans. To the second interrogatory he saith: A majority of the bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, under a deed of trust to the Farmers' Loan and
578 Trust Company, of New York, dated April 1, 1869, to secure an issue of 2,000 bonds of $1,000 each, now are and have been since February 21st, 1876, in the possession of the said Central Trust Company, which said bonds are held by it for account and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah P. Blossom, committee of bondholders, for the purpose of procuring a foreclosure of said mortgage and effecting a reorganization. Attached to said bonds are coupons maturing on and subsequent to the first day of October, 1874.

Third interrogatory. Please answer the same question as above with regard to the bonds issued by the Indianapolis, Bloomington and Urbana Railway Company, and a mortgage or deed of trust made by the said Indianapolis, Bloomington and Western Railway Company to the Farmers' Loan and Trust Company, dated October 1st, A. D. 1869.

Ans. To the third interrogatory he saith: 2,009 bonds of $1,000 each, issued by the Indianapolis, Bloomington and Western Railway Company under a mortgage or deed of trust executed by said railway company to the Farmers' Loan and Trust Company, dated October 1st, 1869, now are in the possession of the Central Trust Company, and over 1,600 have been since March, 1876, which said bonds are held by
579 it for account, and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, committee of bondholders, for the purpose of procuring a foreclosure of said last mentioned mortgage and of effecting a reorganization. Attached to said bonds are coupons due on and after the first day of October, 1874.

Fourth interrogatory. Please answer the same question as to the bonds issued by the said Indianapolis, Bloomington and Western Railway Company, secured by a mortgage or deed of trust made by the said Indianapolis, Bloomington and Western Railway Company to William Dennison and Benjamin E. Smith, dated October 1st, 1870.

Ans. To the fourth interrogatory he saith: A majority of the bonds issued by the Indianapolis, Bloomington and Western Railway Company, secured by a mortgage or deed of trust made by the said railway company to William Dennison and Benjamin E. Smith, dated October 1st, 1870, are now and have been since the 21st day of February, 1876, in the possession of the Central Trust Company, which said bonds are held by it for account and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, committee of bondholders, for the purpose of procuring a foreclosure of said last mentioned mortgage and

a reorganization. Attached to said bonds are coupons due on and after July 1st, 1874.

H. F. SPAULDING.

580 Subscribed & sworn to before me March 7, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Deposition of Charles H. P. Babcock.

First interrogatory. You will please state your name, age, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Charles H. P. Babcock; I am 52 years of age; I reside in the city, county, and State of New York; and by occupation I am secretary of the Central Trust Company of New York.

Second interrogatory. Please state, if you know, where a majority of several series of bonds, issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, under a deed of trust to The Farmers' Loan and Trust Company, of New York, dated April 1st, 1869, to secure an issue of 2,000 bonds of $1,000 each, now are, and how long they have been there, and by whom the same are controlled, and
581 for what purpose said bonds are where they are now. State also what past-due coupons, if any, are on said bonds unpaid.

Ans. To the second interrogatory he saith: A majority of the bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, under a deed of trust to The Farmers' Loan and Trust Company, of New York, dated April 1st, 1869, to secure an issue of 2,000 bonds of $1,000 each, now are, and have been since February 21st, 1876, in the possession of the said Central Trust Company, which said bonds are held by it for account and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, committee of bondholders for the purpose of *a* procuring a foreclosure of said mortgage and effecting a reorganization. Attached to said bonds are coupons maturing on and subsequent to the first day of October, 1874.

Third interrrogatory. Please answer the same question as above with regard to the bonds by the Indianapolis, Bloomington and Western Railway Company, under a mortgage or deed of trust made by the said Indianapolis, Bloomington and Western Railway Company to The Farmers' Loan and Trust Company, dated October 1st, A. D. 1869.

582 Ans. To the third interrogatory he saith: 2,019 bonds of $1,000 each, issued by the Indianapolis, Bloomington and Western Railway Company, under a mortgage or deed of trust executed by said railway company to The Farmers' Loan and Trust Company, dated October 1st, 1869, now are in the possession of the Central Trust Company, and over 1,600 have been since March, 1876, which said bonds are held by it for account and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, committee of bondholders, for the purpose of procuring a foreclosure of said last mentioned mortgage, and of effecting a reorganization. Attached to said bonds are coupons due on and after the first day of October, 1874.

Fourth interrogatory. Please answer the same question as to the bonds issued by the said Indianapolis, Bloomington and Western Railway Company, secured by a mortgage or deed of trust made by the said Indianapolis, Bloomington and Western Railway Company, to William Dennison and Benjamin E. Smith, dated October 1st, 1870.

Ans. To the fourth interrogatory he saith: A majority of the bonds

issued by the Indianapolis, Bloomington and Western Railway Company, secured by a mortgage or deed of trust made by the said railway company to William Dennison and Benjamin E. Smith, dated
583 October 1st, 1870, are now and have been since the 21st day of February, 1876, in the possession of the Central Trust Company, which said bonds are held by it for accou't and subject to the order of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, committee of bondholders, for the purpose of procuring a foreclosure of said last mentioned mortgage and a reorganization. Attached to said bonds are coupons due on and after July 1st, 1874.

C. H. P. BABCOCK.

Subscribed & sworn to before me March 7th, 1877.
EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

584 *Deposition of Charles P. Choate.*

First interrogatory. You will please state your name, age, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Charles P. Choate; aged, twenty-eight; residence, city of Brooklyn; and am a clerk in the employ of Perkins, Livingston, Post & Co.

Second interrogatory. You will please state if you know of any demands of payment of coupons for interest on bonds of the Danville, Urbana, Bloomington and Pekin Railroad Co., of Illinois, secured by a trust-deed of said Danville, Urbana, Bloomington and Pekin Railroad Company to The Farmers' Loan and Trust Company of the city of New York; and if you know of such demand, please state how you know and when such was made, and on whom, and whether or not payment was made on such demand.

Ans. To the second interrogatory he saith: I presented and made a demand at the office of the Indianapolis, Bloomington and Western Railway Company in this city on the 1st day of October, 1874, for the payment of 85 coupons of the first-mortgage bonds of the said
585 railroad company for $35 each, due October 1st, 1874, Nos. 401 to 450 and 466 to 500, both inclusive, and eighty-five coupons of the first mortgage bonds of the Danville, Urbana, Bloomington and Pekin Railroad Company for $35 each, due October 1st, 1874, Nos. 1201 to 1260 and 1276 to 1300, both inclusive. I also presented the coupons to The Farmers' Loan and Trust Company, and there demanded payment; but payment was refused at both places.

CHAS. P. CHOATE.

Subscribed & sworn to before me this 7 day of March, 1871.
EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

Deposition of Clark R. Griggs.

First interrogatory. Please state your name, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Clark R. Griggs; my residence, Ridgefield, New Jersey; and occupation I
586 am in the railroad business.

Second interrogatory. Please state what connection you had with the Danville, Urbana, Bloomington and Pekin Railroad Company, of Illinois, and for how long.

Ans. To the second interrogatory he saith: I was its president from the first day of its organization till after its consolidation with the Indianapolis, Crawfordsville and Danville Railroad Company and nearly two years thereafter. The name and style after the consolidation was the Indianapolis, Bloomington and Western Railway Company.

Third interrogatory. Please state what connection you had with the Indianapolis, Bloomington and Western Railway Company, of Illinois and Indiana, and for how long.

Ans. To the third interrogatory he saith: I was president for nearly two years, and vice-president from that time to this.

Fourth interrogatory. Please state how many bonds of said Danville, Urbana, Bloomington Pekin Railroad Company were issued and sold,
secured by its deed of trust, to The Farmers' Loan and Trust
587 Company of New York, and how many of said bonds remain outstanding and unpaid, and if any default has been made in the payment of the interest on said bonds please state such default.

Ans. To the fourth interrogatory he saith: The amount issued and sold for value was 2,000 bonds of $1,000 each, of the Danville, Urbana, Bloomington & Pekin Railroad Company, secured by its deed of trust to The Farmers' Loan and Trust Company. They are all outstanding and unpaid. There has been default in the payment of the interest for the last two years and a half or three years.

Fifth interrogatory. Pleas, answer the same question as to the bonds of the Indianapolis, Bloomington and Western Railway Company, secured by a deed of trust to The Farmers' Loan and Trust Company.

Ans. To the fifth interrogatory he saith: There were 5,000 bonds of $1,000 each, secured by a deed of trust of the Indianapolis, Bloomington and Western Railway Company to The Farmers' Loan and Trust Company, 3,000 of which were issued and sold for value. The remaining 2,000 are in the possession of The Farmers' Loan and Trust Company, trustee.

All of the bonds issued are still outstanding and unpaid.
588 There has been a default in the payment of the interest on these bonds, which default happened two years and a half or three years ago.

Sixth interrogatory. Please answer the same question with respect to the bonds of the said Indianapolis, Bloomington and Western Railway Company secured by a deed of trust to William Dennison and Benjamin E. Smith.

Ans. To the sixth interrogatory he saith: There were 1,500 bonds of $1,000 each, all of which were issued and sold for value; they all still remain outstanding and unpaid; and default has been made in the payment of the interest on said bonds for more than two years. I am unable to state the exact dates of the default in respect of any of the series of bonds inquired about in the fourth, fifth, and sixth interrogatories, as I do not remember the date of the several issue.

C. R. GRIGG.

Subscribed and sworn to before me this 7th day of March, 1877.

EDWARD L. OWEN,

U. S. Commissioner for the Southern Dist. of New York.

589 *Deposition of Charles A. Newring.*

First interrogatary. You will please state your name, age, residence, and occupation.

Ans. To the first interrogatory he saith: My name is Charles A. New-

ring; age, twenty-three; residence, New York City; and occupation, clerk in the employ of E. C. Hemans, of 80 Broadway.

Second interrogatory. You will please state if you know of any demands of payment of coupons for interest of bonds of the Danville, Urbana, Bloomington and Pekin Railroad Co., of Illinois, secured by a deed of trust of said Danville, Urbana, Bloomington and Pekin Railroad Company to The Farmers' Loan and Trust Company, of the city of New York, and if you know of such demand, please state how you know and when such was made, and on whom, and whether or not payment was made on such demand.

Ans. To the second interrogatory he saith: On the 1st of October, 1874, I presented for payment at the office of the Indianapolis, Bloomington and Western Railway Company, No. 57 Broadway, fifteen coupons of the Danville, Urbana, Bloomington and Pekin Railroad Company of $35 each, and fifteen coupons of Indianapolis, Bloom-
590 ington and Western Railway Company of $35 gold each, all maturing October 1st, 1874, and that payment on same was refused, the answer being that there were now no funds to pay, and that a circular would be issued shortly explaining the reason of the non-payment.

C. A. NEWRING.

Subscribed & sworn to before me this 7th day of March, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, the commissioner named in the foregoing commission, before whom the testimony of the witnesses named in said commission was to be taken, do hereby certify that I was attended by each of such witnesses, and reduced to writing the answers of each witness to the interrogatories.

I further certify that the deposition of the said Rosewell G. Rolston, Josiah B. Blossom, Austin Corbin, Giles E. Tainter, Charles P. Choate, Charles R. Griggs, and Charles A. Newring were taken at my office number 71 Wall street, in the city of New York, on the 6th and 7th days of March, 1877, as appears from the certificate at the end of each deposition, and that the deposition of Henry F. Spaulding and Charles
H. P. Babcock were taken on the 7th day of March instant, at
591 the office of the Central Trust Company, No. 14 Nassau street, New York. I further certify that each of said depositions were sworn to and subscribed by each of said witnesses, and I further certify that the reason for not taking the deposition of G. S. Moulton is that he was & is absent from the city.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 7th day of March, in the year of our Lord one thousand eight hundred and seventy-seven, and the Independance of the United States the one hundred and first.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

(Indorsed:) Filed March 10, 1877, & opened at request of C.W. Fairbanks. J. A. Jones, clerk.

592 *Decree on original bill.*

In the circuit court of the United States for the southern district of Illinois.

WEDNESDAY, *July 18th, A. D.* 1877.

Present, Hon. Thomas Drummond, presiding judge; Hon. Samuel H. Treat, district judge.

MALCOM C. TURNER, JAMES TURNER, THOMAS E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, as Turner Brothers,
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas. } Original bill.

AND

FARMERS' LOAN AND TRUST COMPANY
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, William Dennison, Benjmin E. Smith, Robert Turner, Joseph T. Thomas, Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and
593 Joseph S. Decker, copartners, as Turner Brothers. } Cross-bill.

AND

CHARLES W. SMITH AND ROBERT TURNER
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, Farmers' Loan and Trust Company, Benjamin E. Smith, Joseph T. Thomas, Malcom C. Turner, James Turner, Thomas E. Turner, Archibald Turner, George M. Turner and Joseph S. Decker. } Cross-bill.

AND

JOSEPH T. THOMAS AND BENJAMIN E. SMITH
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company, Farmers' Loan and Trust Company, Charles W. Smith, Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner and Joseph S. Decker. } Cross-bill.

This cause coming on to be heard at this term of court, and it appearing to the court that the defendants to the cross-bill of the Farm-

ers' Loan and Trust Company; that is to say, the Indianapolis,
594 Bloomington and Western Railway Company, William Bowen, William T. Sandusky, Amos Conoway, Edward Goggle, Christian Grove, William R. Arthur, Ellen Wright, Antye Raub, Isaac Tillotson, Michael Schwartz, Silas T. White, L. Bartley Rodebaugh, William C. Smith, Lewis Gordon, Amasa J. Merriman, Edwin C. Brewer, John S. Gillespie, James Rayburn, jr., William J. Rhodes, Aaron P. Rhodes, Charlton M. Waters, Oliver Pease, Silas Waters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, Ann Drury Thompson, Malcom C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, have severally failed to appear, plead, answer, or demur to the cross-bill of said complainant, the Farmers' Loan and Trust Company, on motion of the said last-named complainant, it is ordered and decreed by the court that the said cross-bill shall be taken as confessed as to said defaulting defendants. And thereupon this cause came on to be heard on the said original bill, and the answers and replications thereto, and on the said several cross-bills and the various answers and replications thereto, and upon the exhibits filed with said several bills, and the documentary evidence, proofs, as shown by stipulations on file and reports of master; on consideration whereof the court doth find the equity of the case to
595 be with the complainant in the cross-bill, the Farmers' Loan and Trust Company, and that all and singular the allegations and charges in the cross-bill of said last-named complainant contained are true; and, particularly, 1st.

1st. That prior to and on July 12th, 1869, there was a railroad corporation existing under the general laws of the State of Indiana, called the Indianapolis, Crawfordsville and Danville Railroad Company, and that prior to April 1st, 1869, and on July 12th, 1869, there existed in the State of Illinois, under and in pursuance of the laws thereof, a corporation called the Danville, Urbana, Bloomington and Pekin Railroad Company.

2d. That on the 1st day of April, 1869, said last-named railroad company caused to be executed and issued two thousand bonds of one thousand dollars each, numbered from one to two thousand, inclusive, payable in gold coin on the first day of April, A. D. 1909, at the office of the said Farmers' Loan and Trust Company, in the city of New York, with interest at the rate of seven per cent. per annum in gold coin, payable semi-annually on the first days of October and April in each year, for said several installments of interest, coupons or interest warrants were attached to each of the said bonds, and that to secure the payment of said bonds and the interest coupons thereto at-
596 tached the said last-mentioned railroad company on the said 1st day of April, 1869, duly made, executed and delivered to said complainant, the Farmers' Loan and Trust Company, as trustee, a mortgage or deed of trust of even date with said bonds, in and by which said railroad company conveyed to said trustee all and singular the property, rights and franchises of said railroad company then held or thereafter to be acquired, as described and set forth in said mortgage, and which embraces the whole of the line of railroad of said company, and appurtenances as an entirety, which said mortgage was duly filed for record in the various counties in or through which said railroad was located and built, and that the same is a valid conveyance for the purpose therein mentioned, and as such is a paramount lien upon the said railroad as located and built by said company from Pekin, in Tazewell County, Illinois, eastwardly through Bloomington, Cham-

paign, and Danville to the eastern boundary line of the State of Illinois, and the property and franchises of said corporation thereby conveyed and is entitled to priority in the distribution of the proceeds of any sale of the property covered thereby to be made pursuant to this decree over any other lien or claim against the same except as hereinafter set forth and provided.

3rd. That afterwards, to wit, on the 12th day of July, in the
597 year 1869, under and by virtue of the provision of the laws of the said States of Illinois and Indiana, the said The Danville, Urbana, Bloomington and Pekin Railroad Company and the said The Indianapolis, Crawfordsville and Danville Railroad Company, by articles of consolidation duly entered into between them, which were duly ratified by the boards of directors and stockholders of the said several companies, consolidated their stock and property and became one corporation under the name and style of the Indianapolis, Bloomington and Western Railway Company, by means of which said consolidation and by virtue of the laws aforesaid in that behalf, the said new corporation became vested with all and singular the property, estate, privileges, and franchises of the said two corporations and subject to all the debts, liabilities, and obligations of the said two corporations; that afwards, to wit, on the 1st day of October, in the year 1869, the said consolidated company caused to be executed and issued three thousand (3,000) bonds, numbered from one (1) to three thousand (3,000), both inclusive, each for the sum of one thousand dollars, payable in gold coin, free of government tax, on the first day of October, in the year 1909, with coupons or warrants thereto attached for the payment of interest thereon at the rate of seven per cent. per annum in gold, payable in the city of New York on the first days of April and Octo-
598 ber in each year, and that to secure the payment of the said bonds and the interest warrants thereto attached, and to secure the payment of two thousand (2,000) other bonds of like tenor and effect, which were never issued or sold, the said consolidated company, that is to say, The Indianapolis, Bloomington and Western Railway Company, on the first day of October, A. D. 1869, executed and delivered unto the said complainant, the Farmers' Loan and Trust Company, as trustee, a mortgage or deed of trust, conveying its entire line of railroad, lying, being, and extending from Indianapolis, in the State of Indiana, to Pekin, in the State of Illinois, and all its property thereunto belonging or appertaining, then held, or thereafter to be acquired, and specifically mentioned and described in the said complainants' crossbill, and embracing the whole of said line of railroad and appurtenances as an entirety, which said mortgage was duly filed for record and recorded in the various counties in the said States of Indiana and Illinois in or through which the said consolidated line of railroad was located and constructed, and the same is a valid conveyance for the purposes therein mentioned, and as such is a permanent lien upon the said railroad and the property and franchises of the said corpora-
599 tion conveyed by the said mortgage or deed of trust, and is entitled to priority in the distribution of the proceeds of any sale of the said property, to be made pursuant to this decree, over any other lien or claim against the same, except the said above-mentioned lien of the said mortgage or deed of trust made by the said Danville, Urbana, Bloomington and Pekin Railroad Company upon the property therein described, and further excepting as hereinafter set forth and provided.

4th. The court doth further find that the said Indianapolis, Bloomington and Western Railway Company, afterwards, to wit, on the 1st

day of October, A. D. 1870, caused to be executed and issued fifteen hundred other bonds, called second mortgage bonds, numbered from one to fifteen hundred, inclusive, each for the sum of one thousand dollars bearing date October 1st, 1870, payable twenty years from date thereof, with interest at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July, of each and every year, for which said several installments of interest coupons or interest warrants were attached to each of the said bonds, and that to secure the payment of said bonds and the interest coupons thereto attached the said Indianapolis, Bloomington and Western Railway Company, on the said 1st day of October, A. D. 1870, as by its charter was duly author-
600 ized, and under the order of its board of directors did duly make, execute, and deliver a certain other trust-deed or mortgage called a second mortgage, conveying to William Dennison and Benjamin E. Smith, as trustees, for the uses therein expressed, all and singular, its entire railway, extending from Indianapolis, in the State of Indiana, westward to Pekin, in the State of Illinois, together with all and singular the property, rights, and franchises of said railway company, then held and enjoyed, together with all property it might thereafter acquire, as is more particularly described and set forth in said mortgage, embracing the whole of said line of railroad and appurtenances as an entirety, and that said mortgage was thereafter, to wit, in the said month of October, A. D. 1870, duly filed for record in all the various counties through which the said road passes in the States of Illinois and Indiana, and is a valid conveyance for the purposes therein set forth, and as such is a paramount lien upon said railroad, property, rights, and franchises of said company, and is entitled to priority in the distribution of the proceeds of any sale thereof to be made pursuant to this decree over any other lien or claim against the same, except the said above-mentioned lien of the said mortgage of the Danville, Urbana, Bloomington and Pekin Railroad Company, and the lien of the
601 said first mortgage of the Danville, Urbana, Bloomington and Pekin Railroad Company, and the lien of the said first mortgage of the said Indianapolis, Bloomington and Western Railway Company hereinbefore described, and further excepting as hereinafter set forth and provided.

5th. The court further finds that the said two thousand bonds secured by the said mortgage or deed of trust made by the said Danville, Urbana, Bloomington and Pekin Railroad Company to the said Farmers' Loan and Trust Company were, long before the filing of the original bill in this case, all put upon the market and sold for value in due course of business, and are all now owned by various persons and corporations, and that the principal of said bonds, together with the said instalments of interest thereon, that fell due on the first day of October, A. D. 1874, and on the 1st day of April, A. D. 1875, and on the 1st day of October, A. D. 1875, and on the 1st day of April, A. D. 1876, and on the 1st day of October, A. D. 1876, and on the 1st day of April, A. D. 1877, with interest on the said several instalments of interest from and after their respective dates of maturity, together with interest on the principal of said bonds from and after the 1st day of April, 1877, remain wholly unpaid. And the court further finds that prior to the filing of the amended cross-bill of the said Farmers' Loan and Trust Company herein
602 the holders of more than one-half of said last-named bonds had made demand in writing on the said Farmers' Loan and Trust Company to proceed to the foreclosure of said mortgage.

The court further finds that demand for the payment of the said sev-

eral installments of interest was duly made at the date of the maturity of said interest coupons respectively, and payment thereof was then and there refused; wherefore the court finds that the principal of said bonds has become due and payable, and that there is now due and owing for principal and interest of said two thousand bonds the sum
$2,493,850.00 of two million four hundred and ninety-three thousand eight hundred and fifty dollars ($2,493,850.00).

6th. The court further finds that the said three thousand bonds secured by the said mortgage or deed of trust made by the said Indianapolis, Bloomington and Western Railway Company to the said Farmers' Loan and Trust Company, of date of October 1st, 1869, were, before the filing of the original bill herein put upon the market and sold for value in due course of business, and are now held and owned by various persons and corporations, and that the principal of said three thousand bonds, together with the various installments of interest thereon that fell due on the 1st day of October, A. D. 1874, 1st day of April,
603 A. D. 1875, 1st day of October, A. D. 1875, 1st day of April, A. D. 1876, 1st day of October, A. D. 1876, and 1st day of April, A. D. 1877, with the interest on the said several instalments of interest from the dates of their several maturities, together with the interest on the principal of said bonds from the 1st day of April, 1877, remain wholly unpaid.

The court further finds that the payment of the said several installments of interest was duly demanded at the dates of their maturity as aforesaid, and on such demand payment was refused. The court further finds that prior to the filing of the said amended cross-bill of the said Farmers' Loar and Trust Company, demand in writing was made by the holders of more than one-half of said three thousand bonds on the said trustee, the said Farmers' Loan and Trust Company, to foreclose said mortgage; wherefore the court finds that the principal of said bonds has become due and payable, and there is now due and owing for principal and interest of said three thousand bonds the sum of
$3,740,775.00. three million seven hundred and forty thousand seven hundred and seventy-five dollars ($3,740,775.00.)

7th. The court further finds that the said fifteen hundred bonds, secured by the mortgage or deed of trust made by the said Indian-
604 apolis, Bloomington and Western Railway Company to the said William Dennison and Benjamin E. Smith were before the filing of the original bill herein put upon the market and sold in due course of business for value, and are now owned and held by various persons and corporations, and that said one thousand five hundred bonds, together with the various installments of interest thereon, that fell due on the 1st day of July, 1874, 1st day of January, 1875, 1st day of July, 1875, 1st day of January, 1876, 1st day of July, 1876, 1st day of January, 1877, and 1st day of July, 1877, together with interest on the said several instalments of interest from the dates of their maturity, respectively, together with interest on said one thousand five hundred bonds from the said 1st day of July, 1877, remain wholly unpaid; and that the payment of the said several installments of interest was duly demanded at their maturity, which was refused; wherefore the court finds that the principal sum of said one thousand five hundred bonds is now due, and that there is now due and unpaid of principal and interest of said bonds the sum of nineteen hundred and sixty-
$1,962,600.00. two thousand six hundred dollars ($1,962,600.00).

8th. It is therefore considered, adjudged, and decreed by the court

605 that the defendant the said Indianapolis, Bloomington and Western Railway Company, pay to the said complainant in the cross-bill, the said Farmers' Loan and Trust Company, the said amounts above found to be due on the debt secured by said two indentures made to the said Farmers' Loan and Trust Company, to wit, the sum of six million two hundred and thirty-four thousand six hundred and twenty-five dollars ($6,234,625.00), together with interest thereon at the rate of six per cent. per annum from and after the date of this decree, and together with the cost of this suit, taxed at dollars, within twenty days from this date, and that in default of such payment by the said Indianapolis, Bloomington and Western Railway Company in the time aforesaid, and in default of such payment by all of the said defendants in such time, it is further ordered, adjudged, and decreed that the equity of redemption of all of the said defendants to the said cross-bill of the said Farmers' Loan and Trust Company in said mortgaged property be forever barred and foreclosed, and that the said railroad of the said Indianapolis, Bloomington and Western Railway Company, hereinbefore mentioned as covered 606 by the two mortgages to complainant, The Farmers' Loan and Trust Company, including the rights of way therefor, the roadbed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, and tools and implements owned or provided to be used therein, and in constructing and repairing cars and machinery for said road, or the track and superstructures aforesaid, and all fixtures and structures of whatever name or nature, and the lands and grounds connected therewith, used, or provided to be used in operating said road, wherever situated, and all cars, engines, and rolling stock belonging to said company (except as hereinafter expressly excepted), and all supplies and other things provided by the said company, or by the receiver thereof, to be used in operating said road, together with all corporate franchises of said company, and of the said original companies, that is to say, the said The Danville, Urbana, Bloomington and Pekin Railroad Company, the Indianapolis, Crawfordsville and Danville Railroad Company, and the said The Indianapolis, Bloomington and Western Railway Company, including the right and franchises of said several companies to be and act as corporations, so far as the same relates to the main line, be sold as herein after ordered and directed, and as an entirety, the same being 607 in the opinion and judgment of this court incapable of being sold separately or in division without material injury to the value thereof.

$6,234,625.00.

9th. And it is further ordered and decreed that the said mortgaged property be sold without appraisement, and without reference, and not subject to any law or laws of the said States of Illinois or Indiana, conferring rights of redemption from mortgage sales.

10th. And the court doth order and direct that all and singular the property and effects, rights and franchises of the said Indianapolis, Bloomington and Western Railway Company, and of the several original or constituent companies so ordered to be sold aforesaid, shall be sold by John A. Jones, the master in chancery of this court, and John D. Howland, master in chancery of the circuit court of the United States for the district of Indiana.

11th. And it is further ordered and decreed that the said masters in chancery, at the same time and place, and concurrently with the execution of this decree, also execute the decree of the circuit court of the United States for the district of Indiana, for the sale of the said

mortgaged property, and that they report their doings in this behalf to this court. And that after confirmation thereof the clerk of
608 this court shall make a transcript of such report of sale and order of this court confirming the same, and transmit the same, duly certified, to the clerk of said circuit court of the United States for the district of Indiana, to be there entered of record.

12th. And the court doth further order, adjudge, and decree that the said masters in chancery, before offering said property, franchises, and premises for sale, shall first advertise the time, terms, and place of such sale, together with a brief general description of such property, in one newspaper published in the city of New York, in the State of New York, one published in the city of Indianapolis, in the State of Indiana, and one published in the city of Springfield, in the State of Illinois, for four consecutive weeks, the first insertion of which shall not be less than thirty days before the day of such sale, and which said sale shall be made by public auction, to the highest bidder, at the south door of the court-house, in the city of Bloomington, McLean County, State of Illinois, the same being on the line of said railroad.

And the said masters in chancery are hereby authorized and directed to require a deposit to be made by each and every bidder or bidders at such sale of fifty thousand dollars, as security for the bid in case
609 the property should be struck off to said bidder or bidders, which shall be absolutely forfeited to the use of the trusts in the hands of the said complainant, The Farmers' Loan and Trust Company, if the bidder to whom the property shall be struck off shall fail to pay or complete the said purchase in accordance with the terms of said sale and orders of this court.

13th. That said sale be made subject to judgments for right of way, and to all legal and valid claims therefor, and also subject to all sums legally due for taxes, which are a lien prior to said mortgage, and also subject to the provisions of certain contracts of lease and purchase heretofore made with Oliver Adams for five hundred box freight-cars by said receiver, which claims, judgments, and taxes and car contracts shall be assumed by the purchaser or purchasers in addition to the amount of the purchase-money so bid.

14th. That of the purchase-money not less than fifty thousand dollars, in addition to the heretofore-mentioned deposit of fifty thousand dollars, shall be paid in cash on the day of sale, out of which two sums, amounting, in the aggregate, to one hundred thousand dollars, shall be paid all the costs, fees, allowances, and compensation herein provided for, and the expense of said sale, and on delivery of the deed so much
610 more of the purchase-money shall be paid into court in cash or certificates of receiver's debt as shall be necessary to pay and discharge the portion of the receiver's debts arising in the operation of the aforesaid main line of railroad not hereinbefore directed to be assumed by the purchaser, and that portion of all such other claims and sums of money as shall be hereinafter allowed by this court and by the circuit court of the United States for the district of Indiana in the cause pending therein, hereinafter referred to, in preference to the liens of the hereinbefore-mentioned mortgages or deeds of trust, for debts due by said railway company for work, labor, supplies, and material done and furnished during the six months next preceding the first day of December, 1874, in the operation of said main line of said railroad, which payment for debts due, as last aforesaid, for six months prior to December 1, 1874, shall be made into court, without prejudice to the right of The Farmers' Loan and Trust Company to object to the same, and to appeal

from any order or orders which may be hereafter made by the court, directing the money so paid to be distributed to the various claimants thereof.

15th. That for the remainder of the purchase-money above the amounts so required to be paid in cash at the time of the sale and at the time of the delivery of the deed, as above provided, and as may be here-
611 after required by the court, the said masters may receive any of the said past-due coupons and of bonds secured by the aforesaid mortgage set forth in the said bill of complaint, each such coupon and bond being received for such sum as the holder thereof is entitled to receive under the distribution herein ordered and according to the priorities herein adjudged.

16th. That after such sale the masters shall forthwith make report thereof to this court, and after the confirmation thereof by the court, shall execute and deliver a deed to the purchaser or purchasers of said mortgaged premises on their complying with the condition and terms of the said sale, and that such sale be thereafter valid and effectual forever.

17th. And it is further ordered, adjudged, and decreed that after the confirmation of said sale, and the delivery of the deed thereunder, the purchaser or purchasers of said property be let into the possession, use, and enjoyment thereof; that any of the parties to this action who may be in possession of the said premises or any part thereof, and any person who since the commencement of this action has come into pos-
session of the same, or any part thereof, under the said defend-
612 ants, or either of them, and the receiver of this court, who may be in possession or have control of the same, or any part thereof, under or by virtue of any order of this court heretofore made or hereafter to be made in this suit prior to said sale, shall deliver and surrender possession to said purchaser or purchasers on the production of said master's deed, or other proper evidence of the sale and purchase of said premises, franchises, and property, and shall also surrender and deliver up to such purchaser or purchasers all moneys in his hands arising from the operation of the said road; all books of account and record, legal and other papers, choses in action, claims, and property and effects of every nature in his possession or under his control; provided, however, said books and papers shall be at all times subject to inspection and transcription by or on behalf of parties interested in the extension line.

18th. It is further ordered, adjudged, and decreed that such purchaser or purchasers shall thereupon be invested with and shall have, hold, possess, and enjoy the said franchises, property, and premises so sold, pursuant to this decree, and all the rights and privileges pertaining thereto, as fully and completely as the said several corporations,
613 to wit, the said The Danville, Urbana, Bloomington and Pekin Railroad Company, the said The Indianapolis, Crawfordsville and Danville Railroad Company, and the said The Indianapolis, Bloomington and Western Railway Company, or the receiver had and held the same.

19. And it is further ordered, adjudged, and decreed that the said masters, after retaining from the proceeds of the sale hereby directed to be made the amount of their fees and expenses (the fees of the said masters for such sale and all other services rendered by them pursuant to this decree hereafter to be fou'd by the court if not agreed on by the parties) shall forthwith pay out of the said net proceeds of such sale as follows, that is to say:

1. The costs of this suit.

2. Out of the surplus, if any, to the said complainant, The Farmers' Loan and Trust Company for compensation for its services in this behalf, the sum of five thousand dollars, and in addition thereto the sum of four thousand four hundred and seventy-four dollars for its incidental disbursements and expenses in the carrying on and management of this suit, and the further sum of thirty-two thousand dollars for counsel and solicitors' fees to be distributed and paid by said masters in the manner following, to wit: J. Augustus Johnson, of New
614 York, the sum of eight thousand dollars; to the firm of Williams, Burr and Capen the sum of twelve thousand dollars; to the firm of Willy and Parker the sum of six thousand dollars; and to the firm of Brown and Campbell the sum of six thousand dollars.

Out of the surplus, if any, the following amounts now here found and adjudged and decreed to be prior and superior to the liens of the said mortgage, to wit: 1. That portion of the claims legally due and owing by the said receiver in this cause incurred by or under the orders of court and arising in the operation of the main line of the railroad of the Indianapolis, Bloomington and Western Railway Company from Indianapolis, in the State of Indiana, to Pekin, in the State of Illinois, which shall remain unpaid after the application thereto of all money in the hands of the receiver up to the time of the confirmation of the sale herein provided for properly belonging to the said main line as hereafter apportioned, fixed, and determined, except such as are herein directed to be assumed by the purchaser. 2. The amount due and owing by the Indianapolis, Bloomington and Western Railway Company for work, labor, supplies, and material done and furnished during the six months next preceding the first day of December, 1874, in the operation of said main line of said railroad, if any such amount shall
615 be hereafter so found and adjudged to be valid and paramount claims as aforesaid. and because the amounts of said indebtedness are not and cannot be known to the court until the coming in of the report of the special masters heretofore appointed to ascertain the same and make report thereof to this court, the said reference is hereby approved and continued, but such reference shall in no wise abridge or impair the right of any of the parties hereto to prosecute an appeal from any order or orders of the court allowing or disallowing said claims or any part thereof and declaring the same to be prior and superior to said mortgages. 4th. The surplus, if any, to be distributed between the holders of said two thousand bonds issued by the said Danville, Urbana, Bloomington and Pekin Railroad Company mentioned in the second clause of this decree and the holders of the said first-mentioned three thousand bonds issued by the said Indianapolis, Bloomington and Western Railway Company mentioned in the third clause of this decree in the manner following, $\frac{117}{200}$ parts thereof to the holders of the said two thousand bonds, and $\frac{85}{200}$ parts thereof to the holders of the said three thousand bonds, until the whole amount of said indebtedness, respectively, shall have been paid off and discharged, the said money to be first appropriated to the payment of the said past-due coupons
616 or interest warrants hereinbefore mentioned, pertaining to the said bonds, respectively, and the interest thereon in the order of their maturity, respectively, then to the interest upon the said several bonds, respectively, and then to the payment of the principal of the said bonds, respectively.

5. The surplus, if any, to the holders of the said fifteen hundred bonds issued by the said Indianapolis, Bloomington and Western Railway

Company, mentioned in the fourth clause of this decree, said moneys to be first appropriated to the payment of the said coupons, or interest warrants respectively pertaining to said bonds, and the interest thereon in the order of their maturity, respectively, then to the said interest upon the principal of said bonds, then to the payment of the principal of the said bonds.

6th. The surplus, if any, to be paid into the registry of the court for distribution under the further order of the court.

20th. And it is further found by the court that at the time of the filing of the said original bill, and the appointment of the receiver herein, the said Indianapolis, Bloomington and Western Railway Company owned and had in use on the line of its said road, and upon its line of railroad in the State of Illinois, commonly called the extension (particularly set forth and described in the said cross-bill filed herein by C. W.
617 Smith and Robert Turner, trustees, which last mentioned line was acquired by the said defendant railway company by purchase from the Havana, Mason City, Lincoln and Eastern Railroad Company), certain rolling stock, all of which is covered by the said above-mentioned mortgages or deeds of trust to The Farmers' Loan and Trust Company, and the same are first liens thereon, subject to any exception contained in this decree, and except the portion thereof hereby ordered to be apportioned to the said extension railway, which portion belonging to the said extension is now here found and ordered, adjudged, and decreed to be as follows, viz: Six (6) locomotives, numbered, respectively, 11, 31, 32, 33, 40, 41. Four (4) passenger coaches, numbered, respectively, 9, 11, 15, 21. Three baggage, mail, and express cars, numbered, respectively, 3, 4, 8. Twenty-nine (29) box cars, numbered, respectively, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 734, 736, 738, 740, 744, 746, 750, 752, 754, 756, 758, 760, 762, 764, 766, and 770, and 768. Two (2) caboose cars, numbered, respectively, 11 and 12. Two (2) pilot caboose cars, numbered, respectively, 24 and 25. Nine (9) hand-cars, numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, and marked "Ex." Nine (9) rubble-cars, numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, and marked
"Ex." One boarding-car, numbered 6. Twenty-two (22) coal-
618 cars, numbered, respectively, 301, 305, 307, 309, 311, 313, 315, 319, 321, 323, 325, 327, 329, 331, 333, 335, 339, 341, 343, 345, 347, and 349. Fourteen (14) stock-cars, numbered, respectively, 402, 404, 406, 408, 410, 412, 414, 418, 420, 422, 424, 430, 432, and 434, and twelve (12) flat cars, numbered, respectively, 83, 91, 97, 99, 101, 103, 963, 847, 383, 385, 387, and 389, as per agreement on file, all of which last-mentioned rolling stock is hereby declared not to be subject to the liens of the said mortgages to The Farmers' Loan and Trust Company, and is not to pass to the purchaser or purchasers under the said sale. And this decree is made notwithstanding anything therein heretofore contained, subject to the rights of all claims which have been or may be hereafter made against the property in the hands of the receiver, and which may be adjudged valid by the court and entitled to be paid out of the property or the proceeds thereof.

And it is further ordered that any of the parties to this action may apply to the court for such other or further direction at the foot of this decree as may be necessary to carry it into effect, no other question being reserved except the question as to the amount of the claims or sums of money to be allowed as provided in the fourteenth clause of this decree; and, so far as the same shall be passed upon by the court, such allowance or disallowance shall take effect as if now incorporated in and passed upon by this decree.

619 And it is further ordered, adjudged, and decreed by the court, inasmuch as a portion of the mortgaged property in this decree described and referred to is situated in the State of Indiana, and without the State of Illinois, and as a decree of foreclosure has been or is about to be entered in the circuit court of the United States in and for the district of Indiana, in favor of the complainant herein, the Farmers' Loan and Trust Company, upon said mortgaged property and a sale thereof ordered, and John A. Jones and John D. Howland, the masters in chancery aforesaid, have been or will be ordered to make such sale of that portion of said property situated in the State of Indiana, in conformity with certain rules and regulations in the decree prescribed, that said masters in chancery execute this decree and sell that portion of said railroad property situated in the State of Indiana, at the same time and place and on the same terms and in pursuance of the same notice, together with that portion of said property situated in said State of Illinois as an entirety, and that they report such sale to the said circuit court in and for the district of Indiana as such entirety in pursuance of the direction of this decree to be by said court approved and confirmed as a sale of such property as an entirety, and
620 that on the coming in of such report and the confirmation thereof by this court that the clerk of this court certify to the circuit court of the district of Indiana for its confirmation a copy of such sale and the order confirming the same; to this end it is further ordered, adjudged, and decreed that the clerk of this court do certify and transmit to the said circuit court in the State of Indiana, a copy of this decree, saving and reserving all such rights of appeal to the Supreme Court of the United States therefrom as may be exercised by parties thereto in the circuit court of the United States in and for the district of Indiana, in conformity with the order and direction of said last-mentioned court, and this decree shall in no wise prejudice the rights of complainants, defendants, or interveners in this cause pending in the United States circuit court for the district of Indiana.

And afterwards, to wit, on Monday, the 3rd day of September, at the June term of said court, A. D. 1877, the following further proceedings were had and entered of record in said cause, to wit:

621 *Decree on cross-bill.*

Circuit court of the United States, southern district of Illinois.

MALCOLM C. TURNER ET AL. *vs.* THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company and others.	Original bill.
CHARLES W. SMITH AND ROBERT TURNER *vs.* THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company and others.	Cross-bill.

This cause coming on to be heard on the said cross-bill of Charles W. Smith and Robert Turner, and the answers thereto by the several parties defendant thereto and the replications of said cross-complainants, together with the exhibits, evidence, depositions, the report of the master, and the stipulations on file, and the court being sufficiently

advised in the premises, do find that the material allegations of said cross-bill are true, and upon consideration thereof, it is ordered, adjudged, and decreed as follows:

First. That the said Indianapolis, Bloomington and Western Railway Company did, as by law authorized, sign, seal, acknowledge, and deliver, on June 28th, 1872, its certain trust mortgage to William
622 Dennison and Robert Turner as trustees, conveying unto them "the railway of the said corporation known as the western extension of the said Indianapolis, Bloomington and Western Railway, and described as follows, to wit: commencing at the city of Champaign, in the county of Champaign, Illinois; thence running to the town of White Heath, in the county of Piatt; thence by way of Clinton, in the county of De Witt, Lincoln, in the county of Logan, Mason City and Havana, in the county of Mason, westwardly to the Mississippi River, and from the town of White Heath, by way of Monticello, in the county of Piatt, to the city of Decatur, in the county of Macon, all in the State of Illinois, altogether being in length about two hundred and fifteen miles, together with all its franchises, equipments, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every description, kind, and nature used in or connected with the operation of said line of railway, including all rents, reservations, and reversions of every nature and kind whatever—including all the property between said terminal points which the said railway company then had, owned, or possessed, or might thereafter own, acquire, or possess.

And the court doth further find that the said conveyance was
623 presently, after its execution and delivery, duly recorded according to law in each of the counties through which the said line of road runs, and that since the date thereof the said Dennison has resigned his said trust, and Charles W. Smith has been duly appointed his successor in said trust.

And the court doth further adjudge and decree that by the execution, acknowledgement, and record of said trust mortgage, in the manner set forth in the said cross-bill, the same became, and has ever since continued to be, a valid first lien upon all and singular the property, appurtenances, and franchises therein mentioned, for the security and protection of the several holders of the bonds described in the said trust, mortgaged and intended to be secured thereby.

Second. And the court doth further decree that the said five thousand five hundred bonds described in the said trust mortgage were all duly negotiated for value before the institution of this action, and that the aggregate amount thereof, to wit, five million five hundred thousand dollars (principal and interest payable in gold coin of the United States) together with the unpaid instalments of interest, constitutes a valid subsisting liability of said Indianapolis, Bloomington
624 and Western Railway Company, and that the holders of such bonds and coupons are entitled to share pro rata in the lien and benefit of such common security, and that the same ought to be applied for the payment of their several demands.

Third. It is further found and decreed by the court that no interest has been paid on any of said five million five hundred thousand dollars of extension bonds since the first day of July, 1874, and that there is now due and payable to the several owners and holders of the said bonds and coupons the sum of six million nine hundred and eleven thousand six hundred and sixty-six dollars and sixty-six cents, payable in the gold coin of the United States. And the court doth, there-

fore, adjudge and decree that the said Charles W. Smith and Robert Turner, for the use of the several holders of the bonds and coupons aforesaid and commonly known as "extension bonds" of the said Indianapolis, Bloomington and Western Railway Company, do have and recover of the said Indianapolis, Bloomington and Western Railway Company the said sum of six million nine hundred and eleven thousand six hundred and sixty-six dollars and sixty-six
625 cents, payable in the gold coin of the United States, which said sum the said corporation is ordered to pay, together with costs, into the office of the clerk of this court, in discharge of this said decree, within ten days from this date.

Fourth. And in default of such payment into court it is ordered and decreed that the equity of redemption of the said Indianapolis, Bloomngton and Western Railway Company and the other defendants to said cross-bill, and all and every person claiming by, through, or under it or them, shall be forever barred and foreclosed as to said mortgaged property, or any part thereof, and all and singular the said property described in said mortgage and embraced in this decree, viz: The line of railroad commonly known as the western extension of said Indianapolis, Bloomington and Western Railway, beginning at Champaign, in the county of Champaign, Illinois, and running thence westwardly through Havana, Mason County, Illinois, to the Mississippi River, together with a branch from White Heath, by way of Monticello, to Decatur, Macon County, Illinois, being about 131 miles of completed railroad and about 5 miles of partially constructed line, together with all its franchises, property, lands, tenements, fixtures, buildings,
626 machinery, goods, and chattels of every description between said terminal points, and used in operating said described line of railroad, and including the following equipment and rolling stock:

Six (6) locomotives, Nos. 11, 31, 32, 33, 40, 41.

Four (4) passenger coaches, Nos. 9, 11, 15, 21.

Three (3) baggage, mail, and express cars, Nos. 3, 4, 8.

Twenty-nine box-cars, Nos. 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 734, 736, 738, 740, 744, 746, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770.

Two (2) caboose cars, Nos. 11, 12.

Two (2) pilot caboose cars, Nos. 24, 25.

Nine (9) hand-cars, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9—"ex."

Nine (9) rubble cars, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9—"ex."

One (1) boarding car, No. 6.

Twenty-two coal-cars, Nos. 301, 305, 307, 309, 311, 313, 315, 319, 321, 323, 325, 327, 329, 331, 333, 335, 339, 341, 343, 345, 347, 349.

Fourteen (14) stock cars, Nos. 402, 404, 406, 408, 410, 412, 414, 418, 420, 422, 424, 430, 432, 434.

Twelve (12) flat cars, Nos. 83, 91, 97, 99, 101, 103, 963, 847, 383, 385, 387, 389.

627 Together with all the supplies or material acquired by the receiver for the operation of said portion of railroad known as the extension, as per stipulation, shall be sold as an entirety at public auction, to the highest and best bidder, by John A. Jones, master in chancery of this court, without any right of redemption therefrom.

Such sale shall be made at the door of the court-room of this court, at Springfield, Illinois, at such time and hour as the said master shall appoint, and he is directed and required to give notice of the time, place, and terms of such sale, and of the property to be then sold, by advertisement in one newspaper of general circulation published in

the city of Springfield, Illinois, and one newspaper of general circulation published in the city of Indianapolis, Indiana, and one newspaper of general circulation published in the city of New York, such advertisements to be made sixty days before the day appointed for said sale.

Fifth. The said master shall require of each and every bidder at said sale, before recognizing or crying any such bid, a deposit of twelve thousand five hundred dollars, which sum shall be forfeited absolutely to the complainants for the use of their trust if the bidder to whom the property is struck off shall fail to complete the purchase in accordance with the decree and orders of this court.

628

Such sale shall be subject to judgments and claims for rights of way and to all legal liens for taxes due and unpaid on the portion of railroad herein directed to be sold, with the right reserved to the purchasers to contest the legality or lien of any taxes against the said property, and such sale shall also be subject to the lien and payment of all receiver's certificates issued and outstanding, and decreed to be a separate paramount charge upon said extension railroad at the date of sale under this decree, but such sale shall not be confirmed by the court until provision shall be made satisfactory to the court as to the payment or security to the parties holding the same of all such receiver's certificates.

The master shall require of the approved highest bidder at such sale the payment of the sum of twelve thousand five hundred dollars in cash, in addition to the deposit in his hands, out of which sums shall be paid the costs of this action so far as taxable against said portion of railroad and the expenses and commissions on such sale, and the fees and allowances herein provided for, which sums the said master is directed to pay to the several persons entitled, or their solicitors, and take proper receipts therefor. After confirmation of such sale, and within six months from the day of sale, as much of the remainder of the said purchase-money due on said bid shall be paid in cash to said master as shall be necessary to pay such portion of the receiver's indebtedness or preferred claims for labor and supplies as the court may decree is justly to be apportioned to the said extension line of railroad herein described, and which is not provided for by the issue and acceptance of receiver's certificates, as stated in a previous clause in this decree. And the purchasers shall in addition pay any such sum as may be required by the court by an order to be entered of record.

629

But the right is hereby reserved to said cross-complainants Smith and Turner to appeal unto the Supreme Court of the United States from any and all orders and decrees, allowing, directing the payment of, or apportioning any of such labor or supply claims as a lien paramount to such extension mortgage.

Except the payment aforesaid and any pro rata share due on unsurrendered bonds, which are required to be made in cash, the said master is authorized to receive in discharge of the said bid the surrender to him of the bonds and coupons issued under the said mortgage of June 28th, 1872, and commonly known as Indianapolis, Bloomington and Western Railway Company extension bonds, at the proportion which each surrendered bond or coupon would be authorized to receive as its distribution share out of the proceeds of sale.

630

Sixth. The master shall promptly make report of the said sale, and on confirmation thereof by the court, and full payment of the purchase-money as herein required, the master shall make, execute, acknowledge, and deliver unto the said purchaser or purchasers of said prem-

ises a good and sufficient conveyance, which shall vest in him or them, and his or their heirs and assigns forever, all and singular the title in fee simple absolute of all the property and franchises herein ordered to be sold, forever, free and clear of all equity of redemption of the said Indianapolis, Bloomington and Western Railway Company, and all and every one claiming by, under, or through it, unto the
631 said mortgaged premises and franchises or any part thereof. Said conveyance shall recite that the title thereby acquired is in all things subject to the amount of such receiver's certificates as a first lien, which the purchaser and grantee therein assumes and promises to pay as a part of the conditions and terms of purchase.

And on the production of such master's conveyance, the said Indianapolis, Bloomington and Western Railway Company and the receiver of this court, and all and every of their agents, or any person or corporation having in his or their possession any of the property described in said master's deed, to forthwith deliver the same unto the said purchasers or their agent, who shall thenceforth hold, possess, use, and enjoy the same, as fully in every respect as the said Indianapolis, Bloomington and Western Railway Company had authority to do.

Seventh. Out of the proceeds of sale, the master shall pay, after retaining expenses of sale and such fees for his services as the court shall award or the complainants shall agree, in the following order:
632 1st. Such portion of the costs of this action as are taxable in this cross-cause and against the fund thereof.

2nd. To the complainants for services as trustees, three thousand dollars, and the further sum of fifteen thousand dollars for counsel and solicitors' fees, to be distributed as follows:

Seven thousand five hundred dollars to Henry Crawford, solicitor, and seven thousand five hundred dollars to McDonald and Butler, solicitors.

3rd. Such portion of the claims legally due from or by the receiver as have arisen in the operation of said extension line of railroad and as the court may hereafter decree are properly and legally chargeable against it and which are not evidenced by recorder's certificates as aforesaid.

4th. Such portion of the claims for labor and supplies due and owing by the said Indianapolis, Bloomington and Western Railway Company as shall hereafter be adjudged to be valid and paramount claims upon the said extension line of railroad, in preference to the lien of said trust mortgage of June 28, 1872, and which are not evidenced by receiver's certificates as aforesaid.

633 5th. The remainder to be distributed pro rata among the holders of the 5,500 bonds and coupons and certificates of indebtedness of the issue commonly known as Indianapolis, Bloomington and Western Railway Company extension bonds.

And any of the parties interested may apply to the court for further directions at the foot of this decree as may be necessary to carry it into effect, and finally adjust all the equities of the parties.

And afterwards, to wit, on Wednesday, the 8th day of May, at the January term, A. D. 1878, of said court, the following further proceedings were had and entered of record in said cause, to wit:

634 *Amendment to decree on cross-bill.*

Circuit court of the United States, southern district of Illinois.

MALCOLM C. TURNER
ag't
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company and others. } Original bill.

CHARLES W. SMITH AND ROBERT TURNER
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company and others. } Cross-bill.

And on this 8th day of May, A. D. 1878, it being at the January term, 1878, of the said court, the parties hereto having appeared, by their respective solicitors, on the motion of Charles W. Smith and Robert Turner, complainants in said last above-entitled cross-bill, by Henry Crawford and McDonald and Butler, their solicitors, by way of further direction for the execution of the decree heretofore entered herein, of the date of September 3rd, 1877, and in further adjustment of the equities then reserved, it is considered by the court and further ordered, adjudged, and decreed that the said original decree be, and the same is hereby, fully reaffirmed, except as to the following amendments, in which respect alone the said decree is modified, viz:

635 It is further ordered that said sale be made subject to judgments for right of way on such extension railroad, and to all legal and valid claims therefor; and also subject to all sums legally due for taxes which are a lien on such extension railroad prior to said mortgages; and also subject to that portion of such other claims and sums of money as are now under consideration by and as shall be hereafter allowed by this court or the circuit court of the United States for the district of Indiana in the causes pending therein and affirmed by the Supreme Court of the United States on appeal, should an appeal be taken, in preference to liens of the hereinbefore mentioned mortgages or deeds of trust, for debts due by said railway company for work and labor done and supplies and material furnished during a period not exceeding the six months next preceding the first day of December, 1874, in the operation of that portion of the said railroad commonly called the "extension," and hereby directed to be sold without prejudice to the rights of the said Charles W. Smith and Robert Turner to object to the same, and to appeal from any order or orders which may be hereafter made by the court in relation thereto; which

636 claims, judgments, and taxes and car contracts, and such back pay, labor, and supply claims as shall be finally adjudged against the property herein directed to be sold after any appeal so taken shall be assumed by the purchaser or purchasers in addition to the amount of the purchase-money so bid, and in all cases where judgments obtained against the receiver are appealed from to the Supreme Court of the United States, and supersedeas granted, the sale of said property hereby directed to be sold shall be subject to the final determination upon said appeal or appeals.

And the payment of any claims so allowed, or of any judgment against the receiver so obtained shall not be required to be made at or prior to the time of the delivery of the deed, but the said sale shall be made subject to, and the purchaser or purchasers of said property shall agree to

pay off so much of the said claims or sums of money as shall be finally allowed in the progress of this cause, or after such appeal and the same shall be paid and discharged by said purchaser or purchasers within six months after the entry of an order of this court upon a mandate of the Supreme Court concerning matters so appealed from being filed in this court, and the said deed shall be delivered without payment of said claims or sums of money, or any part thereof upon the purchaser so conditionally agreeing to pay so much and no more of such claims
637 and sums of money as may finally be allowed upon such appeal.

And it shall be competent for the court to enforce hereafter by proper order or decree herein, or to be added to the foot of this decree any of the conditions or provisions herein.

And that the last clause of the fourth article of said original decree be, and the same is hereby, amended and modified so as to provide that *that* the publication therein directed shall be made once each week for four consecutive weeks.

638 *Petition of James Turner for leave to intervene.*

Circuit court of the United States, southern district of Illinois. In chancery.

MALCOMB C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company. } Original bill.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
SAME. } Cross-bill.

Petition of James Turner, assignee of Turner Brothers, for liberty to intervene by answer or cross-bill.

To the judges of said circuit court:

Your petitioner, James Turner, a citizen of the city and State of New York, respectfully shows to this court:

First. That he was one of the complainants in the original bill of complaint filed in this suit, and one of the firm of Turner Brothers.

Second. That subsequent to the bringing this suit, the firm of Turner Brothers was forced into involuntary bankruptcy caused by the defendant railroad company not paying its indebtedness to said Turner Brothers; that said indebtedness of said railway company was very large,
639 averred in the fourteenth paragraph of the original bill to be $865,000, exclusive of interest; that at that time said Turner Brothers held certain stock and bonds as collateral security for said indebtedness.

Third. That since the filing of said bill the said Turner Brothers have duly and legally sold certain bonds and shares held by them as collateral security for said indebtedness, which collaterals at their nominal or par value amounted to about $1,200,000, but at said sale said Turner Brothers realized therefrom only the net sum of $285,100, which amount has been duly credited on said indebtedness, and has reduced it that much.

That there is now due from said railway company to your petitioner the sum of $771,907.68, with interest from October 1st, 1878, as shown

more in detail by statement of account hereunto attached, marked Exhibit A, which is referred and made a part of this petition.

Fourth. That said credit was given to said railway company under the statute of Illinois, which provides "That all persons who may have furnished, or who shall hereafter furnish to any railroad corporation now existing, &c., any fuel, ties, material, supplies, or any article or thing necessary for the construction, maintenance, operation, or repair of such road, by contract with said corporation shall be entitled to be paid for the same as part of the operating expenses of said road, and in order to secure the same shall have a lien upon all the prop-
640 erty, real and personal and mixed, of said railroad corporation," &c. * * * "Provided suit shall be commenced within six months," &c. * * *

Fifth. Your petitioner avers that said indebtedness was created by contract with said railway company, and that suit was commenced to recover the same within six moths, viz, November 18th, 1874, by filing the original bill in this cause on that day.

Sixth. Your petitioner learns from a copy of the decree made in this case on the 18th day of July, 1877, that a default was entered against your petitioner and the other members of the firm of Turner Brothers at some previous time. Your petitioner avers that neither he nor any member of said firm of Turner Brothers had any knowledge of said default until within the last thirty days, when he learned the same from reading a copy of the decree entered on said 18th day of July, 1877; that he and said firm of Turner Brothers had employed able counsellors and solicitors of this court to represent them in all things pertaining to said foreclosure suits, especially to make answer and plead thereto. That your petitioner or said Turner Brothers had no defense to make to the merits of said cross-bill, but they had and he has the claim amounting to about $772,000, which your petitioner claims should have been under the laws of Illinois, either in whole or in part, audited and allowed by the court as a claim prior in lien to the mortgage debt of said Farmers' Loan and Trust Company.

That your petitioner was a complainant in said suits, and that
641 it was not competent for the defendant to enter a default against him in said causes, and thereafter file a supplemental bill asking for material relief without notice thereof to your petitioner.

Your petitioner avers that he has received no notice thereof, and that none was given to him.

Seventh. That when said Turner Brothers were forced into bankruptcy, John Caskee, esq., of the city of New York, was duly and legally appointed trustee to settle said estate, under the advice of a committee of creditors then and there appointed for that purpose.

That said bankruptcy and appointment of assignees was suggested in open court and upon the record in this case, but that no steps whatever have been taken to make said assignees a party to said suit.

That said Caskee accepted said appointment, and is now performing the duties thereof.

That on or about the 26th day of September, 1878, the said trustee assigned and sold all the claims, rights, and equities, except certain bonds, coupons, and shares which said firm of Turner Brothers had or ought to have against said railway company, to your petitioner, and thereupon duly and properly conveyed said claims to your petitioner, who now owns the entire right of property therein.

Eighth. Your petitioner avers that the defendant The Indianapolis, Bloomington and Western Railway Company, admitting its indebted-

642 ness, and desiring to secure the payment of the debt hereinbefore described, on or about the 16th day of November, 1874, made a chattel mortgage to Joseph T. Thomas, esq., of the city of Philadelphia, of all its equipments, rolling stock, machinery, tools, wood, coal, furniture, safes, iron rails not in tracks, ties, lumber, iron, steel, spikes, wheels, oil, waste, stationa'y, office, station and railway supplies, and all other personal property of any kind or description, in trust to secure the payment of the debts due to your petitioner or to his assignors, and to various other parties named therein. a copy of which mortgage is hereunto attached, marked Exhibit B, and made a part hereof. Your petitioner avers that he supposed and believed that said Thomas, as his trustee, had brought before this court in this cause said mortgage for its adjudication, and resting under that belief, he, as one of the cestui que trust, omitted to prosecute the same; that he was not disabused of said belief until the present month of October, 1878, when he received a letter from said trustee informing him that he (the trustee) had done nothing to protect his cestui que trust. Your petitioner avers that he is one of the cestui que trust under said chattel mortgage to the amount of about $1,000,000.

Your petitioner avers that the said Thomas is a trustee with Smith, prosecuting in this court a second mortgage, so called, to foreclosure and sale, and that he is one of the parties in whose favor a
643 decree of foreclosure was made July 18, 1877, and an amended decree May 8, 1878. That, being a complainant in another mortgage having claims conflicting with the rights of cestui que trust under said chattel mortgage of Nov. 16, 1874, the said Thomas is disqualified from acting as trustee and from prosecuting the claims of said chattel mortgage.

Ninth. Your petitioner disclaimed any desire to delay the other creditors from getting the money due to them by sale of the mortgaged premises or otherwise, and therefore attaches a copy of his account hereto, marked Exhibit A, to the end that the same may be speedily passed upon by the court or its master, and that suitable provision may be made in the decree of foreclosure protecting your petitioner in his just, legal, and equitable rights.

Wherefore your petitioner humbly prays this court to take his case into consideration, and upon consideration of the merits thereof, to allow him to make a suitable answer to the cross-bill of said Farmers' Loan and Trust Company and to the cross-bill of Smith and Turner, setting up his claims substantially as hereinbefore set forth, and asking for a judgment of this court for the amount due him, and giving him a priority in lien, for such sum as the court shall deem just, to the claims of said Farmers' Loan and Trust Company, or that the court will order a sale of the property embraced in the chattel mortgage
644 free from all other liens, and that he may take whatever steps he deems necessary or desirable, either by answer, cross-bill, or otherwise, to present in proper form and manner his grievance to this court, and to get such redress and relief as to equity appertains; or that the court will grant such other further or different relief as to equity appertains. And your petitioner, as in duty *duty* bound, will ever pray.

New York, October 23, 1878.

JAMES TURNER.

N. A. COWDREY,
Solicitor.

STATE OF NEW YORK,
City and County of New York, ss:

On this 23rd day of October, 1878, personally appeared James Turner, the signer of the foregoing petition, and made oath that he had read the same and that the contents thereof were true of his own knowledge.

JAS. TURNER.

Sworn to before me the day and year before named.
[SEAL.] W. D. SEARLS, 14,
Notary Public, New York Co.

645 EXHIBIT A, attached to petition of James Turner in suit of Malcomb Turner et al. vs. Indianapolis, &c., Railway Co.

ACCOUNT No. 1.

Acceptances Indianapolis, Bloomington & Western Railway Company, in a/c with Turner Brothers.

DEBIT.

1873.			
September	29.	To cash loaned on your draft, accepted by us to pay coupons on bonds.....	$110,000 00
Dec'r	30–31.	To cash loaned on your draft, accepted by us to pay coupons on bonds....	60,000 00
			$170,000 00
1874.			
January	1.	To balance due brought forward.....	$170,000 00
February	25–27.	" your drafts accepted by us.....	35,000 00
March	3–4–6.	" " " " " "	70,000 00
April	1.	" " " " " "	300,000 00
"	2.	" $16,660 gold @ 112 % loaned you with which to pay coupons on extension bonds.	18,659 20
"	2.	" $175,000 gold @ 113½ loaned you with which to pay coupons on bonds of Danville & Urbana	198,625 00
May	30.	" your drafts accepted by us.....	25,000 00
June 2–6–8 &	10.	" " " " " "	95,000 00
July	18.	" cash paid, coupon, notices Griggs, Welsh and Meads, expenses to Europe.....	2,083 34
October	7.	" cash paid.....	4,000 00
"	14.	" " " Springfield bank.....	500 00
			$918,867 54
646 1874.			
Nov'ber	18.	To balance carried forward.....	$148,948 65
Dec'b'r	8.	" cash paid in settlement of foreign credit with Drexel, Morgan & Co., by which release of collaterals was obtained..	20,000 00
			$168,948 65

1875.				
January	1.	To balance brought forward		$118,948 65
1878.				
October	1.	" interest on this account to date, 3 years, 9 months.....		31,223 00
				$150,171 65

647 CREDIT.

1873.				
Dec'b'r	31.	By balance due brought to new account	$170,000 00	
				$170,000 00
1874.				
February	25.	By cash from sale of acceptances.....	$9,798 06	
Nov'b.	3.	" " " " " " ..	29,335 00	
"	4.	" " " " " " ..	19,609 44	
"	6.	" " " " " " ..	19,463 89	
"	26.	" " " " " " ..	48,761 42	
"	31.	" " " " " " ..	126,552 52	
"	"	" sale of $5,000 bonds	4,000 00	
April	1.	" cash from sale of acceptances	38,926 87	
"	2.	" " " " " " ..	19,596 12	
"	4.	" " " " " " ..	19,530 00	
May	11.	" your drafts returned.....	15,000 00	
" 19, 21, 23.		" " " "	50,000 00	
June 6, 8, 10.		" " " "	47,000 00	
" 26, 29.		" " " "	20,000 00	
July	1.	" " " "	15,000 00	
"	15.	" sale of $141,000 bonds sold in Europe.....	91,564 94	
September	24.	" your drafts returned.....	50,000 00	
October	5,6,14.	" " " "	115,000 00	
"	14.	" gold coupons returned unpaid $3,885 @ 112½.....	4,370 63	
"	"	" currency ditto..	1,360 00	
"	17.	" your draft returned.....	25,000 00	
Nov.	18.	" balance carried forward...	148,948 65	
				$918,867 54

648	1874.			
	Dec'b'r 8.	By your drafts returned....	$50,000 00	
	" 31.	" balance carried to new account.....	118,948 65	
				$168,948 65
	1878.			
October	1.	By balance brought over to account No. 2.....	$150,171 65	
				$150,171 65

ACCOUNT NO. 2.

Cash account Indianapolis, Bloomington & Western Railway Company in account with Turner Bros.

DEBIT.

			Interest.	
1873.				
August	22.	To cash loaned you, days 128..	$1,891 56	$76,000 00
September	1.	" " " " " 119..	9,970 82	430,899 58
October	1.	To cash loaned you to pay coupons, days 89	707 77	46,908 32
Nov'b.	6.	To cash loaned you to pay coupons, days 55	592 59	55,431 76
Dec'b'r	31.	To cash loaned you to pay coupons, days 1	3 80	19,844 06
		Balance of interest		13,166 54
				$642,250 26
1874.				
January	1.	To balance brought forward, days 360	$44,957 52	$642,250 26
"	2.	" cash loaned you to pay coupons, days 358	4,421 62	62,082 69
Dec'b'r	31.	" balance on interest		49,379 14
				$753,712 09
649 1875.			Interest.	
January	1.	To balance brought forward, days 133	$19,491 83	$753,712 09
Dec'b'r	31.	" interest on balance May 18th, days 227	33,268 00	
"	"	" balance of interest		52,759 83
				$806,471 92
1876.				
January	1.	To balance brought forward		$521,371 92
1878.				
October	1.	" interest to date, 2 years and 9 months.		100,364 11
"	1.	" balance from account No. 1		150,171 65
				$771,907 68
1878.				
October	1.	To balance due this date		$771,907 68

NEW YORK, , 1878.
S. E. & C.

CREDIT.

1873.			
Dec'b'r	31.	By balance brought forward	$642,250 26
			$643,250 26

	1874.						
	December 31.	By balance					$753,712 09
650	1875.						
	May 13.	By	$862,000	bonds	sold	(collaterals)	$189,640 00
	" "	"	94,000	"	"	"	21,150 00
	" "	"	22,000	"	"	(collaterals) C. C. & I. C.	37,610 00
	" "	"	58,000	"	"		
	" "	"	40,000	"	"	(collaterals)	8,800 00
	" "	"	124,000	"	"	"	27,900 00
	" "	"	1,206,000	"	"	"	285,100 00
	December 31.	"	balance brought forward to new acco'nt.				521,371 92
							$806,471 92
	1878.						
	October 1.	By balance due October 1st, 1878					$771,907 68
							$771,907 68

651 EXHIBIT B, attached to petition of James Turner.

This indenture, made this sixteenth day of November, A. D. one thousand eight hundred and seventy-four, between the Indianapolis, Bloomington and Western Railway Company, a corporation organized and existing under the laws of the States of Indiana and Illinois, and having its principal office in the State of Illinois, at the city of Urbana, in Champaign County, and having its principal place of business in the State of Indiana, in the city of Indianapolis, in the county of Marion, party of the first part, and Joseph T. Thomas, of Philadelphia, Pennsylvania, trustee, as hereinafter mentioned, as party of the second part, witnesseth that whereas the said party of the first part has in operation a line of railway extending from Indianapolis, Indiana, into and through the counties of Marion, Hendricks, Boone, Montgomery, Fountain, and Warren, in the State last aforesaid, to the western boundary line of Indiana, and from thence westwardly through the counties of Vermillion, Champaign, Piatt, De Witt, McLean, and Tazewell, and also extending from Champaign, in said county of Champaign, to Decatur, in Macon County, and also to Havana, in Mason County, Illinois;

And whereas in the construction and purchase of material, supplies, and equipment for the use and operation of the said line of
652 railway, the said corporation, party of the first part, has incurred large liabilities in the shape of promissory notes, acceptances, and adjusted accounts, which said obligations, so incurred for the common benefit of said property, it is desired by the said party of the first part shall be secured so far as practicable upon the property of the corporation embraced in this conveyance, without any preferance for any one of such creditors over any other, but putting all of such liabilities upon a common footing, so far as the security of this indenture is concerned, upon the particular property and income and tolls, which are hereinafter specified and intended to be included in this indenture, and as such common security to be available to the party of the second part, for the use, benefit, and behoof of the creditors of the said Indianapolis, Bloomington and Western Railway Company, holding such notes, obligations, and acceptances for value, but upon the conditions and trust in this indenture contained:

Now, therefore, this indenture witnesseth, that in consideration of the premises, and of one dollar to the said party of the first part in hand paid, at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, and in order to execute the purpose and intent aforesaid, and to secure the payment to the several persons and corporations who may now be or at any time hereafter become the owners or holders of the said several notes, accept-
653 ances, or obligations (which are more particularly set forth and included in a schedule marked A, which is hereunto attached, and is intended to be and is hereby declared to be a part of this indenture, as fully in all respects as though the same were fully incorporated herein), in accordance with the conditions and trust hereinafter set forth, the said party of the first part hath bargained, sold, assigned, transferred, conveyed, and set over, and by these presents doth bargain, sell, assign, transfer, convey and set over, unto the said party of the second part, as such trustee as aforesaid, and to his lawful successors in said trust, all and singular the engines, cars, machinery, tools, wood, coal, furniture, safes, iron rails not in tracks, ties, timber, iron, steel, spikes, wheels, oil, waste, station*ar*y, office, station and railway supplies, and *and* all other personal property of any kind or description now owned by the said party of the first part, or in or to which it has any right, title, or equity, it being the intent by this indenture to embrace all personal property or fixtures of all and every kind, character, or description, in any manner now belonging to the said party of the first part, together with the tolls, receipts, and income to be derived from the use of said property or any part thereof.

To have and to hold all and singular, the said property, goods, chattels, and tolls, and income aforesaid, unto the said party of the second part as trustee, for the benefit and security of the said creditors
654 intended to be provided for by these presents, in accordance with the conditions and trusts hereinafter set forth, that is to say, upon the condition that if the said party of the first part shall well and truly pay, or cause to be paid, all and singular, the said notes, bills, acceptances, and obligations included in the said schedule A, and all renewals of the same, together with the agreed interest upon said several demands, then and in that case the rights, interest, title, and lien hereby granted in said goods, chattels, and the income therefrom shall cease and determine.

And this conveyance is upon the further trust that until the said party of the first part shall make default in the payment of some of said notes, bills, obligations, or renewals of the same, intended to be hereby secured, or until the exercise of the discretion of the said party of the second part, as hereinafter set forth, it shall be lawful for the said party of the first part to remain in and retain full possession of all and singular the said goods, chattels, property, and tolls hereby mortgaged; provided always, that such possession shall not continue more than two years from this date, unless the indebtedness hereby secured shall, before that time, be fully paid off, discharged, or satisfied; and provided further, that in case the said party of the first part shall at any time sell or dispose, or attempt to sell or dispose, of any of the property hereby mortgaged, or to apply the same to any other use or purpose than for the construction or maintenance or use and
655 operation of the said railroad, or in case the said party of the first part shall at any time be subject to judgment, execution, attachment, sequestration, or other lien or legal process, under or by virtue of which the said property and tolls hereby conveyed shall be

seized, or exposed to seizure, lien, or sale, then and in that event it shall be lawful for the party of the second part, or his successor for the time being, at his or their discretion, to enter upon and take actual possession of all and singular the goods, chattels, and property hereby mortgaged, and thereafter maintain complete and exclusive possession and control of each and every part of such mortgaged property, anything hereinbefore to the contrary notwithstanding, and to sell such property in such manner and upon such notice as may be proper in the discretion of such trustee, and apply the proceeds thereof, pro rata, to the payment and satisfaction of the several notes, bills, and obligations then unpaid and outstanding, which are at large set forth in said schedule A, and intended to be secured by this indenture, and all rewards and substitutions of the same, and such pro rata payment is to be made on such claims irrespective of whether the same or any thereof are then due or are unmatured, it being the true intent and meaning of this indenture to place all of such creditors hereby secured on such an exact priority as to this security, wholly disregarding when the said debts were severally created or will mature.

And it is further expressly agreed that if the proceeds of such sale are more than sufficient to pay and discharge all and singu-
656 lar the said notes, bills, obligations, or the renewals thereof then outstanding and unpaid, then the party of the second part shall pay over any surplus of such proceeds unto the party of the first part, or its successors or assigns.

And it is further expressly agreed, and these presents are upon the express condition, that if the said party of the first part shall at any time prior to any such sale so to be made by the party of the second part, whether before or after entry, make payment of all the then outstanding notes, bills, obligations, and intended to be hereby secured, any renewal of the same, then and thenceforth this indenture, and all the estate hereby granted, shall become and be utterly void and of no further effect, and the same shall be by such payment wholly annulled and satisfied without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or his successor in said trust.

And it is further agreed by the parties hereto that the party of the second part, and any lawful successor in said trust, being trustee for the time being, shall be responsible only for gross negligence and wilful default in the discharge of any duties devolved upon him or them by this indenture, and that in the event of any such possession or sale being made by the party of the second part, or in the event that the said party of the second part shall be compelled, or it is deemed by
657 him advisable at his discretion, to take any legal steps for the protection of the lien and estate hereby vested in him, that he shall be entitled to demand, charge, and receive reasonable and just compensation for his services so rendered, and all just and necessary expenses incurred by him in such duty, including compensation to all agents, servants, and attorneys by such trustee employed for the protection of the estate hereby vested in him; all which sums shall be first paid out of any proceeds of any sale of the property hereby conveyed.

In case of the resignation or inability to act of the party of the second part the board of directors of the party of the first part may appoint a successor, and failing so to appoint, any court of competent jurisdiction in either of the States of Indiana or Illinois may, on the nomination of creditors holding one-fifth in amount of the total debt intended to be

hereby secured, appoint a trustee or trustees to fill such vacancy, and any such appointment by the board of directors, or by such court, shall invest the trustee or trustees so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to all and singular the same obligations hereby granted and given to or imposed upon the said party of the second part.

In witness whereof the said Indianapolis, Bloomington and Western Railway Company has caused these presents to be executed and
658 signed by its president and attested by its secretary in behalf of said company, and have also caused its common or corporate seal to be affixed to this indenture in duplicate.

INDIANAPOLIS, BLOOMINGTON AND
{ I., B. & W. R. R. } WESTERN RAILWAY COMPANY,
{ CORPORATE SEAL. } By B. E. SMITH, *President.*

Attest:
A. P. LEWIS,
Secretary.
Witness:
C. W. SMITH.

STATE OF ILLINOIS,
Champaign County, ss:

Be it remembered that on this sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy-four, in the State and county aforesaid, before me, the undersigned, a justice of the peace in and for said county, personally appeared Benjamin E. Smith, to me personally known, and known by me to be the president of the Indianapolis, Bloomington and Western Railway Company, and who is personally known to me to be the identical person whose genuine signature is subscribed to the foregoing instrument as having executed the same as such president, and the said Benjamin E. Smith, being by me duly sworn, did depose and say that he lives at Columbus, Ohio, and that
he is the president of the said Indianapolis, Bloomington and
659 Western Railway Company; that the seal affixed to the foregoing indenture was and is the corporate seal of said Indianapolis, Bloomington and Western Railway Company, and that the foregoing instrument was executed, sealed, and delivered under the order and authority of the said corporation, and that he, the said Benjamin E. Smith, as such president, did acknowledge that he had executed the said instrument, and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Indianapolis, Bloomington & Western Railway Company for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and seal as such justice in the city of Urbana, in the county of Champaign and State of Illinois, this 16th day of November, in the year one thousand eight hundred and seventy four (1874).

JOHN P. TENBROOK, [SEAL.]
Justice of the Peace.

660 SCHEDULE A.

1871.			
June.	Busey Bro	4,000	
1873.			
Oct.	Rogers Loco	12,427	4 notes.

Nov.	Do.	29,514 11	G. "
	Wyatt & Latham	1,864 65	
De.	Rogers Loco	31,718 24	10 notes.
1874.			
Jan.	Do.	26,075 14	8 "
	U. S. Expr	100,000	200 bonds B. E. S.
Feb.	Rogers Loco	33,572 71	
Mar.	Do.	32,249 91	
Apr.	Do.	26,510 44	
May.	Do.	34,131 60	
	A. Gross	8,000	15 bonds B. E. S.
June.	Rogers Loco	32,781 47	
July.	Do.	26,945 76	
	Jas. Rayburn	2,750	
	S. W. Car Co	5,000	B. E. S. & C. R. G.
	West Car Co	191,614 43	
Aug.	Rogers Loco	34,690 50	10 P. & S. bonds.
	Merch't Bank	4,000	B. E. S. & C. R. G.
	J. J. Lapley	1,000	
	Turner Bro	25,000	B. E. S. & C. R. G.
	S. W. Car Co	5,000	B. E. S. & C. R. G.
	W. H. Smith	7,500	28 bonds.
	H. Crea	909 72	
Sept.	Ind'p'ls Rolling Mill	5,243 90	
	Do.	4,575 30	
	Morgan Oil Co	2,196 31	
	Dickason & E	2,576 74	
	P. P. Car Co	6,571 38	
661	Rogers Loco	33,313 03	
Oct.	Do.	27,381 06	
	R. Ingersoll	1,000	
	De Candres	739 80	
	J. V. Taylor	1,184 12	
	Vose, Densmore & Co	5,134 35	B. E. S.
	W. H. Smith	15,000	27 bonds.
	St. Nich. Bank	6,000	6 S. & N.W., 6 I., B. & W., B. E. S. & C. R. G.
	Butterfield & W	1,731	
	Snedeker	3,000	
	Globe B'k	15,000	25 bonds B. E. S. & C. R. G.
	P. P. Car Co	2,207 57	
	Geo. Southers	4,000	
	C. S. Stocker	2,784 05	
	Rogers Loco	10,000	B. E. S. & C. R. G.
	Elliott, Sons & So	6,000	I. & S. Co. & J. H. J., B. E. S. & C. R. G.
	Brown & Blain	6,000	
	Ind. Roll. Mill	4,932 52	
	E. H. Rood	1,475 70	
	St. Nich. Bank	5,000	10 b'ds B. E. S. & C. R. G.
	Mayo & B	4,405 10	
	Do.	5,000	
	Indp. Roll. Mill	1,500	

	H. Reynolds	4,000	
	A. Gunnison & Co	1,649 51	
	J. C. Lake	500	
	Geo. Wooden	500	
Nov.	Rogers Loco	20,324 03	
	D. H. Oliver	906 77	
	Do. Gdn	1,813 54	
	N. McCarthy	2,267 08	
662	L. & H. Houck	1,000	
	R. A. Wilman	1,000	
	S. Powers	691 89	
	Smith & Co	1,100	
	C. P. R. Co	1,000	
	Allen Scott	1,005	
	St. Nich. B'k	4,000	4 S. W. & N. W. bonds, 4 I., B. & W. B. E. S. & C. R. G.
	P. C. Car Co	2,207 57	
	B. F. Harris	13,000	B. E. S. & C. R. G.
	C. S. Stocker	3,000	
	Rogers Lo	10,000	B. E. S. & C. R. G.
	U. Rolling Mill	10,000	
	Webster, D. & Co	1,568 95	
	M. Lassig	633 56	
	Un. Rolling Mill	11,000	
	C. T. Raynolds & Co	1,780 35	
	Brown & Blain	6,000	
	Howard Bro	2,000	
Nov.	Citizens' Nat'l	5,000	Bonds B. E. S. & C. R. G.
	Un. Rolling Mill	13,500	
	Rogers Loco	10,000	B. E. S. & C. R. G.
	Jackson & Sharps Co	5,000	B. E. S. & C. R. G.
	St. Nich. Bank	25,000	50 bonds I. S. to pay B. E. S. & C. R. G.
	Rogers Loco	16,000	
	Ind'p's Roll Mill	1,500	
	A. Gunnison & Co	1,649 51	
	Crerar, Adams & Co	3,000	
	Rogers Loco	16,000	
	Geo. Worden	2,000	
	Ind'p's Roll. Mill	2,000	
	S. W. Car Co	1,557 48	
663	C. R. Griggs	600	
	Ind. Roll. Mill	2,000	
	Do.	2,000	
	Ind. Brass & S. Co	750	
	Do.	750	
	Union Roll. Mill	1,875	
	Do.	1,875	
	N. W. Phelps	1,459 31	
	Do.	1,208 87	
Nov.	N. W. Phelps	1,210 03	
	Butterfield & W	1,000	
	Do.	500	

	Moss B. Coal	4,000	
Nov.	Far. B'k Cov.	1,000	
Dec.	Rogers Loco	13,267	
	Smith & Co	1,000	
	S. W. Car Co	2,500	
	C. S. Stocker	3,000	
	Webster, D. & Co	1,783 34	
	Barnum & R. M'f Co	2,502 96	
	Hinkley Loco. W'ks	7,000	
	Do.	7,000	
	Globe Bank	5,000	Bonds B. E. S. & C. R. G.
	S. W. Cockrane	422 40	
	A. Gunnison & Co	1,649 51	
	W. J. Worden & Co	3,431 79	
	Layman, Cary & Co	1,725 93	
	Hinkley Loco	7,000	
	Do.	7,000	
	Long Island Rus	10,000	20 bonds.
	Morgan Oil Co.		
664	Geo. Locilten	4,000	
	Ind'p's Roll. Mill	3,000	
	Wynhams & D	4,000	
	Ind's Roll. Mill	4,000	
	S. W. Car Co	1,551 48	
	Jackson & Sharps Co	5,000	
	Rogers Loco	16,000	
	C. R. Griggs	600	
	St. Nich. Bank	5,000	B. E. S. & C. R. G. 10 bonds.
	Savings Bank, Peoria	5,000	Do. Do.
	2nd National	10,000	15 bonds B. E. S. & C. R. G.
	Un. Roll. Mill	1,875	
	Do.	1,875	
	Do.	9,218 31	
	St. Nich. Bank	25,000	50 bonds B. E. S.
	S. W. Car Co	3,000	B. E. S. & C. R. G.
	Moss Bank Coal Co	4,568 29	
	Do.	2,500	
	Far. Cov. Bank	1,000	B. E. S. & C. R. G.
	2nd Nat'l, Peoria	10,000	15 bonds B. E. S. & C. R. G.
	C. F. Lucas	2,075	
1875.			
Jan.	Geo. Worden	2,000	
	C. R. Griggs	600	
	1st Nat'l, Springfield	7,800	14 bonds B. E. S. & C. R. G.
	W. J. Mordant & Co	452 70	
	Ind'p's Roll. Mill	5,000	
	Un. Roll. Mill Co	10,000	
	B. E. S	2,500	J. H. Jackson acct. Turner Bro. 25 bonds.
	Globe Bank	15,000	B. E. S. & C. R. G.

	Rogers Loco	16,000	
	Citizens' Bank	10,000	
665	Geo. Worden	500	
	Do.	722 80	
	Moss B. Coal	4,524 39	
	G. Foster, att'y	200	
	Far. B'k, Cov	1,500	B. E. S. & C. R. G.
	C. F. Lucas	2,075	
Feb.	S. W. Car Co	2,500	
	C. R. Griggs	793 07	
	M. B. C. Co	4,652 28	
	Geo. Foster, att'y	200	
	Union Roll. Mill	12,000	B. E. S. & C. R. G.
Mar.	C. R. G. & B. E. S	2,500	Turner accept, Irv'g Nat'l.
	Do.	5,000	Hanover Nat'l B.
	Do.	10,000	108 bonds Imp's & Trad. Nat.
	Do.	2,384 96	Kurtz & Co.
	B. E. S.	2,500	5 bonds Jackson.
Apr.	B. E. S. & C. R. G	5,000	Gallatin Nat.
	Do.	2,382 85	4 b'ds Southwark Bank, Pa.
	Do.	2,382 85	4 bonds North Am. Co.
	Geo. Foster, att'y	200	
May.	Center Pl. R. Co	1,000	
	B. E. S	6,250	10 bonds Bank of Republic.
June.	B. E. S. & C. R. G	2,500	Irving Nat'l.
	Do.	5,000	Hanover Nat'l.
	Do.	10,000	Imp. & Trade Nat'l.
	Do.	2,408 75	5 bonds Kurtz & Co.
	B. E. S.	7,500	Gallatin Nat'l.
	Do.	5,000	Imp. & Trad. Nat'l.
	Do.	1,250	Do.
June.	B. E. S.	2,500	5 bonds J. H. Jackson.
	Do.	1,125	1st Nat'l Spring.
666	Geo. Foster, att'y	200	
July.	B. E. S. & C. R. G	5,000	Gallatin Nat'l.
	Do.	2,408 79	4 bonds Southwark Nat'l.
	Do.	2,408 79	4 bonds North Am.
Aug.	B. E. S.	6,250	10 bonds Bank of Rep.
Sept.	Do.	7,500	Gallatin Nat'l.
	Do.	5,000	Imp. & Tra.
	Do.	1,250	Do.
	Do.	2,500	5 b'*dns* Jackson.
	Do.	1,125	2 bonds 1st Nat'l, Springfield.
	B. E. S. & C. R. G	2,500	Irving Nat'l.
	Do.	10,000	Imp't & Tra.
	Do.	2,448	5 bonds Kurtz & Co.
Oct.	Do.	5,000	Gallatin Nat'l.

	Do.	2,448 49	4 bonds Southwark Nat'l.
	Do.	2,448 49	4 bonds B'k North Am.
Nov.	B. E. S.	6,250	12 b'nds B'k of Republic.
	D. H. Oliver	969 30	
	Do. G'd'n	1,938 62	
	A. McCarthy	2,423 42	
	L. & H. Houck	1,000	
	G. Wooden	1,500	
Dec.	C. R. G. & B. E. S.	2,500	Irv'ng Nat'l.
	Do.	10,000	Imp't & Traders' Nat'l.
1875.			
Dec.	C. R. G. & B. E. S.	2,488 19	5 bonds Kurtz & Co.
	B. E. S.	7,500	Gallatin Nat'l.
	Do.	5,000	Imp. & Trad.
	Do.	1,250	Do.
	Do.	1,125	2 b'ds 1st Nat., Spr.
1876.			
Jan.	B. E. S. & C. R. G.	5,000	Gallatin Nat'l.
	Do.	2,488 19	4 bonds Southwark Nat'l.
667	Do.	2,488	4 bonds B'k of N. A.
	Feb'y B. E. S.	6,250	B'nk of Republic.
M'ch.	Do.	7,500	Gallatin Nat'l.
	Do.	5,000	Imp. & Traders.
	Do.	1,250	Do.
	Do.	1,125	2 bonds 1st Nat'l, Spr.
June.	J. A. Harpham	2,250	
Nov.	D. H. Oliver	1,031 84	
	Do. G'd'n	2,063 69	
	N. McCarty	2,579 78	
1873.			
Sept.	B. F. Harris	2,000	B. E. S. & C. R. G.
	Thompson, Griggs & Co.	2,700 00	
	Account of Smith, Griggs & Co., adjusted by order of the board at about	550,000	
1874.			
June 30.	1st Nat'l B'k of Troy	10,000	
26.	J. T. Agnew	10,000	
30.	H. W. Welch	50,000	
June 30.	Drexel & Co.	50,000	
Sept. 9.	H. C. Bennett	10,000	
	Conn. Nat. B'k at Bridgeport.	10,000	
July 26.	Continental B'k	10,000	
	4 National B'k	60,000	
1873.			
Sept. 1.	Turner Brothers	430,899 58	
Oct. 1.	Do.	46,908 32	
Nov. 6.	Do.	55,431 76	
Dec. 31.	Turner Brothers	19,844 06	

1874.			
Jan'y 2.	Do.	.....	62,082 69
	Do.	open a/c.....	20,076 60

668 Filed for record Nov. 16th, 1874, at 10½ o'clock a. m.

STATE OF ILLINOIS,
Champaign County, ss:

I, J. W. Porter, clerk of circuit court and ex officio recorder in and for the said county, in the State aforesaid, do hereby certify that the within and foregoing is a true, full, correct, and complete copy of instrument executed by Indianapolis, Bloomington and Western Railway Company, by its president, &c., to Joseph T. Thomas, trustee, found in book 24 of m'tg's, on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10, as appears of record in my said office; said copy aforesaid embracing pages numbering from 1 to 19.

In testimony whereof I have hereunto set my hand and official seal of office, at Urbana, this fourth (4th) day of October, A. D. 1878.

J. W. PORTER,
Recorder of Deeds, &c.

(Indorsed:) Filed October 30th, 1878.

J. A. JONES, *Clerk.*

669 *Report of sale of main line.*

In the United States circuit court, southern district of Illinois.

MALCOM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN RAILWAY COMPANY.

To the honorable court:

The undersigned, the masters appointed by said court and charged with the duty of the making the sale herein, respectfully report that, pursuant to the terms of said decree, they gave notice that they would sell the said property as described in the decree, and upon the terms and conditions in the same set forth and prescribed, at the south door of the court-house in the city of Bloomington, in the county of McLean and State of Illinois, at ten o'clock in the forenoon of Wednesday, October 30, 1878, by publishing the same in the Evening Post, a daily newspaper of general circulation printed and published in the city of New York, in the State of New York; also, by publishing the same in the Indianapolis Journal, a daily newspaper of general circulation printed and published in the city of Indianapolis, in the State of Indiana; also by publishing the same in the Illinois State Register, a
670 daily newspaper of general circulation, printed and published in the city of Springfield, in the State of Illinois; that said publication of notice in said newspapers were made once each week for four consecutive weeks in each of said newspapers, the first insertion of which said publication in each of said newspapers was thirty days before the said 30th day of October, A. D. 1878, said publication of notice being in all respects according to the provisions of said decree of sale and the modifications thereof made by said court May 8, 1878. And that after having given said notices, and pursuant thereto and to

said decree, the undersigned attended in person at the city of Bloomington, in said county of McLean and State of Illinois, and at the south door of the court-house, at ten o'clock in the forenoon of Wednesday, October 30, 1878, in the presence of a number of persons attending said sale and having the opportunity to bid thereat, and did then and there, at public outcry, offer and expose to sale upon the terms and provisions of said decree the said property known as the main line of The Indianapolis, Bloomington and Western Railroad, with its franchises, rights, and privileges as described in the printed paper which was read by the masters at the time and in the hearing of the persons so assem-
671 bled, to wit: All that property known as the main line of the Indianapolis, Bloomington & Western Railroad, being a line of railroad commencing at the city of Pekin, in the county of Tazewell and State of Illinois, and running thence eastwardly through the counties of Tazewell, McLean, DeWitt, Piatt, Champaign, and Vermilion, in the State of Illinois, and through the counties of Vermilion, Fountain, Montgomery, Boone, Hendricks, and Marion, in the State of Indiana, to the city of Indianapolis, in the said Marion County, including the rights of way therefor, the road-bed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, and tools and implements owned or provided to be used therein, and in constructing and repairing cars and machinery for said road or the track, and the superstructures aforesaid, and all fixtures and structures of whatever name or nature, and the lands and grounds connected therewith used, or provided to be used, in operating said road, wherever situated, and all cars, engines, and rolling stock belonging to said Indianapolis, Bloomington & Western Railway Company (except the following rolling stock, viz: Six (6) locomotives, numbered respectively 11, 31, 32, 33, 40, and 41; four (4) passenger coaches, numbered respectively 9, 11, 15, and 21; three (3) baggage, mail, and express cars, numbered respectively 3, 4, and 8; twenty-nine (29) box cars, numbered respectively 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 734, 736, 738, 740, 744, 746, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, and 770; two (2) caboose cars, numbered respectively 11 and 12; two (2) pilot caboose cars, numbered respectively 24 and 25; nine hand cars, numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, and 9, and marked "Ex."; nine (9) rubble cars, numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, and 9, and marked "Ex."; one (1) boarding car, numbered 6; twenty-two (22) coal cars, numbered respectively 301, 305, 307, 309, 311, 313, 315, 319, 321, 323, 325, 327, 329, 331, 333, 335, 339, 341, 343, 345, 347, and 349; fourteen (14) stock cars, numbered respectively 402, 404, 406, 408, 410, 412, 414, 418, 420, 422, 424, 430, 432, and 434; and twelve (12) flat cars, numbered respectively 83, 91, 97, 99, 101, 103, 963, 847, 383, 385, 387, and 389); and all supplies and other things provided by said company, or by the receiver thereof, to be used in operating said road, together with all the corporate franchises of said company and of the companies of which it was formed; that is to say, The Danville, Urbana, Bloomington & Pekin Railroad Company, The Indianapolis, Crawfordsville & Danville Railroad Company, and the said "The Indianapolis, Bloomington & Western Railway Company," including the rights and franchises of said several companies to be and act as corporations, so far as the same relates to the said main line.

And the undersigned, the said masters, did thereupon, then and there, offer and expose to sale as aforesaid all of the said property in said notice and decree described and ordered to be sold, and every part and

parcel thereof as an entirety, as commanded by said decree; and thereupon Austin Corbin, Giles E. Taintor, and Josiah B. Blossom, purchasing committee in trust for certain bondholders under the trusts expressed in a certain agreement dated December 20, 1875, and a supplement thereto dated July 25, 1878, copies of which are hereto attached and made part of this report, did bid for the same the sum of one mil-
672 lion dollars, and no one bidding more, and that being the highest and best bid received for the same, said property was thereupon, at the hour of 10.20 o'clock in the forenoon, then and there openly struck off and sold to them for the price aforesaid.

And the said purchasers did then and there deposit with the undersigned $50,000 as security for their said bid, as required by said decree, and did also then and there pay in cash the additional sum of $50,000 of the purchase money.

The said masters submit their doings herein for the consideration and further order of the court.

October 30, 1878.

J. A. JONES,
Master in Chancery of U. S. Circuit Court, Southern District Illinois.
M. P. FISHBACK,
Master in Chancery of U. S. Circuit Court, District of Indiana.

(Indorsed:) Filed November 1st, A. D. 1878. J. A. Jones, cl'k.

673 *Exceptions of C. W. Smith et al. to sale main line.*

In the United States circuit court for the district of Indiana and southern district of Illinois.

MALCOLM C. TURNER ET AL. *vs.* THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al.	Original bill in chancery.
THE FARMERS' LOAN AND TRUST COMPANY *vs.* THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al.	Cross-bill.
CHARLES W. SMITH AND ROBERT TURNER *vs.* THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al.	Cross-bill.

Objections and exceptions to confirmation of sale of main line of said Indianapolis, Bloomington and Western Railway of October 30, 1878.

Come now on this 25th day of November, 1878, Charles W. Smith and Robert Turner, trustees of the extension mortgage of the Indianapolis, Bloomington and Western Railway Company, and Sumner R. Stone, F. D. Tappan, John Welsh, jr., H. K. Thurber, and P. C. Calhoun, committee of holders of bonds issued under said extension mortgage
674 heretofore permitted by order of this court to intervene in this litigation in connection with said trustees of said extension mortgage by counsel, and except and object to the confirmation of the sale of the main line of said Indianapolis, Bloomington and Western Railway of October 30, 1878, as reported to the court by the masters, upon the following grounds of exception and objection:

(1.) Said parties except and object to the confirmation of said sale, and except and object to the disbursement of any of the money now in the hands of the masters and paid or deposited on said sale, whereby said masters made under and in accordance with the modification and amendment of said original decree dated May 8, 1878, and not in accordance with the terms of the original decree, which said original decree was entered July 18, 1877.

That the amended and modified 13th & 12th articles of said decree are, as amended, in direct conflict with the 14th & 12th articles of said original decree, and effect a material and substantial change in the terms of the original decree and in the rights of the parties to said litigation and decree.

That said amendment to said original decree being made after
675 the close of the term at which the original decree was entered, without review of or the setting aside of the original decree by proper proceedings, is null and void; and that said sale having been published and made under said amendment to said decree, and not under and in accordance with said original decree, is null and void and ought not to be confirmed.

(2.) Said parties further except and object to the confirmation of said sale, and except and object to the disbursement of any part of the money deposited with said masters upon such sale, because the terms of said sale were by said masters published in accordance with the amendment of said decree entered May 8th, 1878, and not in accordance with the requirements of the original decree which was rendered and entered July 18, 1877; that by the terms of said publication upon which said sale was made, and by the terms of said amendment to said decree, competition at said sale was rendered impossible, because it was impossible to ascertain and make certain the debts, claims, and liens subject to which said sale was made. Said sale is therefore void, and should not be confirmed.

676 Said parties further except and object to the confirmation of said sale, and except and object to the disbursement of any part of the money deposited with said masters upon said sale until said purchasers fully comply with and perform the terms and conditions contained in the 14th article of the original decree, and particularly until the judgment and claim of the Rogers Locomotive and Machine Works against said receivership is fully paid or provided for, and until all of the receiver's indebtedness is ascertained and paid, as provided for according to said 14th article of the decree.

(4.) Said parties further except and object to the confirmation of sale, and except and object to the disbursements of any part of the money paid to or deposited with the masters upon said sale, because the said main line and said extension were taken into the custody of the court and placed into the hands of a receiver on December 1st, 1874, as a single piece of property; that said main line and said extension have, ever since said last-named date, and still are, operated as a single and unified property; that in the management and operation of said
677 trust property said receiver has made large earnings and has contracted large indebtedness; that very large sums of money, far more than its equitable share of the earnings, have been expended by the receiver in improvements and betterments to the main line of said railway and the property described in said publication and terms of sale; that by said original decree said main line was decreed to be sold seperate and apart from said extension; that the adjustment and division of the earnings and indebtedness of said whole trust property

between said main line and said extension has not yet been made; that said parties excepting and objecting to confirmation of said sale believe and aver that upon any just and equitable division and adjustment of said earnings and indebtedness of said trust property a large indebtedness of said main line to said extension will be shown; and inasmuch as said decree of sale and said publication of terms of sale did not in terms specifically provide for the payment of such balance, if any, found due to the extension in addition to the sum bid at said sale, and
678 inasmuch as the sum bid for said main line at said sale will not be much, if any, more than sufficient to pay costs and receiver's debts other than said indebtedness of main line to extension, these parties say that said sale ought not to be confirmed, and said money deposited with said masters ought not to be disbursed until said adjustment and division of earnings and indebtedness between main line and extension is fully made. Wherefore said parties pray that said confirmation of sale and the distribution or disbursement of said money deposited with said masters upon said sale may be suspended until the full and final adjustment of all the earnings and indebtedness of said trust property is made between said main line and said extension.

(5.) Said parties further except and object to the confirmation of said sale, and except and object to the disbursement of any money deposited with said masters upon said sale, because they say that when the receiver took possession of the trust property, to wit, on December 1, 1874, the Indianapolis, Bloomington & Western Railway Company was delinquent in the payment of the taxes assessed in Illinois upon its capital stock, its rolling stock, and its track, road-bed, and real
679 property for the years 1873 and 1874. That from the time of the construction of said extension it was treated and regarded as an integral portion of said Indianapolis, Bloomington & Western Railway. That in the year 1873 the tax assessed upon the capital stock of said Indianapolis, Bloomington and Western Railway in Illinois amounted to $95,652.09; that this tax was assessed upon and intended to apply to the intangible rights, franchises, and values of the Indianapolis, Bloomington and Western Railway Company.

That long previous to the assessment of this capital stock tax of 1873, and long before the construction of the extension, the said Indianapolis, Bloomington and Western Railway Company had issued and outstanding about $5,000,000 of its capital stock, and that at the time said tax of 1873 was assessed and became payable, said Indianapolis, Bloomington & Western Railway Company had duly issued about $512,000 of capital stock on account of the said extension and by reason of its construction. That the intangible rights, franchises, and values of said extension, as severed and separated from said main line, were
680 then and are of very small value in comparison with the values of said main line; that because said capital stock tax was by the proper officers distributed for collection equally upon all the miles of said Indianapolis, Bloomington & Western Railway, including said extension, said parties to said main line decree and said bondholders' committee, purchasers at said sale, claim that said extension, although severed from said main line by said decree, and although the franchises of said extension so severed from said main line are manifestly of but small value compared with the franchises of the main line, must pay about one-half of said capital stock tax, when in law and equity said extension ought not to be required to pay exceeding one-eighth ($\frac{1}{8}$) or one-ninth ($\frac{1}{9}$) of said capital stock tax; that said capital stock tax is as yet wholly unpaid, and that the equitable adjustment and division of

it between the main line and extension is not yet made; that by the 13th article of said original decree, said sale is made subject to "all sums legally due for taxes," but that notwithstanding said provision, said property ought not to go out from the possession of the
681 court until said capital stock tax is equitably adjusted and divided between said main line and said extension.

Said parties further say that all the taxes assessed upon rolling stock of said Indianapolis, Bloomington & Western Railway Company in Illinois for the years 1873-'4-'5-'6-'7 have been distributed for collection as though the extension owned an equal share of the whole equipment of the trust property, each mile of extension being counted equal in ownership of the whole equipment with each mile of main line, when, by the terms of the orders and decree of this court, the extension has been held to own only $\frac{6}{46}$ of said entire equipment, and should, in said adjustment and division of indebtedness of said trust property, only be required to pay and account for the taxes upon the rolling stock owned by and decreed to said extension; otherwise said extension would be required to pay taxes upon rolling stock and equipment owned by said main line. And said parties say that said matters of said taxes and the equitable division thereof said main line and said extension are wholly unadjusted, and that said sale ought not to be confirmed
682 and said main line ought not to be permitted to go out from the possession of the court until said debts against said trust property for taxes are equitably divided between said main line and said extension.

Wherefore they except and object to the confirmation of said sale, and except and object to the distribution of any part of the money now in the hands of the masters, deposited on said sale, until said taxes are equitably divided between said main line and said extension.

McDONDALD & BUTLER,
Solicitors for
C. W. SMITH AND ROB'T TURNER,
Trustees of Extension Mortgage, and
SUMNER R. STONE,
F. D. TAPPAN,
JOHN WELSH, JR.,
H. K. THURBER,
P. C. CALHOUN,
Committee of Extension Bondholders.

(Endorsed:) Filed Nov. 26, 1878. J. A. Jones, cl'k.

683 *Exception of James Turner to sale main line.*

Circuit court of the United States, southern district of Illinois. In equity.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al. } Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTees, &c.,
vs.
SAME. } Cross-bill.

Exceptions of James Turner to the masters' report of sale made October 30th, 1878. Filed November 1, 1878.

Now comes James Turner, one of the complainants in the original bill

and one of the defendants in the cross-bill above named, and excepts to the masters' report of the sale of said The Indianapolis, Bloomington & Western Railway Company's property and franchises, and shows the following causes for said exception:

1st. That the bid or price of $1,000,000, at which the property described was struck off and sold by the masters, is an inadequate and insufficient price, and far below the real value of the premises attempted to be sold; that its real value is much greater than $1,000,000.

684 That among other reasons why the said masters received so small a bid as $1,000,000 was because they kept the bidding open, including the time occupied by reading copies of the advertisement and of the decree, but twenty minutes, of which time not more than ten minutes were open for bidding; whereas common practice and fairness required of them that the offer of sale should be open for bids for several hours, or at least one hour.

2nd. That said masters did not advertise said premises for sale for a sufficient time after this court had given its opinion, October 9th, 1878; that the law of redemption of real estate, as determined by the Supreme Court of the United States in the case of Brine vs. Hartford Fire Insurance Company (6th of Otto) did not apply to railroads. That until the opinion of this court of October 9th, 1878, had been published it was the received opinion of those learned in the law that said railroad could not be sold under the decree as it then stood; that the same would have to be amended and the property readvertised for sale, subject to the laws for redeeming real estate from sale as laid down by the Supreme Court in said cause; that the time from the publishing the opinion of this court, October 9th, 1878, to the day of sale, Octo-

685 ber 30th, 1878, was not sufficient for intending purchasers to make the necessary financial arrangements for the large sums of money required with which to buy said road; that if longer notice had been given of the intended sale, after the publication of said opinion, October 9th, 1878, the premises would have sold for a larger sum than $1,000,000.

3rd. That the terms of sale were made unusually and unduly onerous by the court, at the instance and request of the parties who claim to have purchased the premises.

It was required of any person proposing to bid that he should deposit $50,000 with the masters offering the premises for sale, and if the bid was accepted that the accepted bidder should forthwith pay to the masters an additional $50,000, making in all $100,000.

That the premises would have sold for more than $1,000,000 had the terms required from proposed bidders been less onerous.

4th. That the masters were unable to tell what amount of claims or debt the premises were sold subject to the payment of; wherefore proposed bidders could not form any intelligent judgment as to

686 what sum to bid, or if they did bid successfully, what sum of money they assumed by the purchase.

That the premises would have sold for more than $1,000,000 if proposed purchasers could have known what sum of money, or within a $100,000 thereof of what they would have to pay if their bid was successful.

5th. That the masters were unable to tell or state to proposed bidders what and how much equipment and other personal property was embraced in the sale, for that certain questions were then pending undetermined by this court which if decided in one way could give all, or nearly all, of the equipment and other personal property to the com-

plainants, Malcomb C. Turner et al., or to their assigns; that so many and so vast in amount are said claims (more than $1,000,000 of the same undetermined) pending before this court that a proposed purchaser could form no intelligent judgment as to what sum to bid for said premises, or what the same would cost him if he were successful in making any bid, or what property he acquired by any successful bid.

That the premises would have sold for more than $1,000,000 if proposed purchasers could have known the approximate amount of
687 said debts and approximately what equipment and personal property he would get if he were successful in his bid.

6th. The said Turner hereby pledges himself to this court that if said premises are offered for sale again by this court that they will sell for more than $1,000,000 the next time.

That he will secure this pledge by a reasonable bond, with good and sufficient sureties, that said premises shall sell for more next time, or he will pay the cost of said sale and such sum as they the next time sell for less than $1,000,000.

7th. In support of said exceptions the said Turner asks leave to refer to the records of this court, and to the receiver's accounts and reports in this case, and to be allowed to produce witnesses and affidavits to sustain the same.

JAMES TURNER.

GEO. W. KREITZINGER, *Solicitor.*
N. A. COWDREY, *Counsel.*

(Endorsed:) Filed Nov. 28, 1878. J. A. Jones, clerk.

688 *Exceptions of James Turner to sale of main line.*

Circuit court of the United States, southern district of Illinois. In equity.

MALCOMB C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTEES, &c.,
vs.
SAME. } Cross-bill.

Exceptions of James Turner to the masters' report of sale made October 30th, 1878. Filed November 1, 1878.

Now comes James Turner, one of the complainants in the original bill and one of the defendants in the cross-bill above named, and excepts to the masters' report of the sale of said The Indianapolis, Bloomington & Western Railway Company's property and franchises, and shows the following causes for said exception:

1st. That the bid or price of $1,000,000, at which the property described was struck off and sold by the masters, is an inadequate and insufficient price and far below the real value of the premises
689 attempted to be sold; that its real value is much greater than $1,000,000.

That among other reasons why the said masters received so

small a bid as $1,000,000 was because they kept the bidding open, including the time occupied by reading copies of the advertisement and of the decree, but twenty minutes, of which time not more than ten minutes were open for bidding; whereas common practice and fairness required of them that the offer of sale should be open for bids for several hours, or at least one hour.

2nd. That said masters did not advertise said premises for sale for a sufficient time after this court had given its opinion, October 9th, 1878, that the law of redemption of real estate as determined by the Supreme Court of the United States in the case of Brine vs. Hartford Fire Insurance Company (6th of Otto) did not apply to railroads.

That until the opinion of this court of October 9th, 1878, had been published it was the received opinion of those learned in the law that said railroad could not be sold under the decree as it then stood; that the same would have to be corrected and the property readvertised for sale, subject to the laws for redeeming real estate from sale as
690 laid down by the Supreme Court in said cause; that the time from the publishing the opinion of this court, October 9th, 1878, to the day of sale, October 30th, 1878, was not sufficient for intending purchasers to make the necessary financial arrangements for the large sums of money required with which to buy said road; that if longer notice had been given of the intended sale, after the publication of said opinion, October 9th, 1878, the premises would have sold for a larger sum than $1,000,000.

3rd. That the terms of sale were made unusually and unduly onerous by the court, at the instance and request of the parties who claim to have purchased the premises.

It was required of any person proposing to bid that he should first deposit $50,000 with the masters offering the premises for sale, and if the bid was accepted that the accepted bidder should forthwith pay to the masters an additional $50,000, making in all $100,000.

That the premises would have sold for more than $1,000,000 had the terms required from proposed bidders been less onerous.

691 4th. That the masters were unable to tell what amount of claims or debt the premises were sold subject to the payment of; wherefore proposed bidders could not form any intelligent judgment as to what sum to bid, or if they did bid successfully, what sum of money they assumed by the purchase.

That the premises could have sold for more than $1,000,000 if proposed purchasers could have known what sum of money, or within a $100,000 thereof, of what they would have to pay if their bid was successful.

5th. That the masters were unable to *to* tell or state to proposed bidders what and how much equipment and other personal property was embraced in the sale, for that certain questions were then pending undetermined by this court, which if decided in one way could give all or nearly all of the equipment and other personal property to the complainants, Malcomb C. Turner et al., or to their assigns; that so many and so vast in amount are said claims (more than $1,000,000 of the same undetermined) pending before this court that a proposed purchaser could form no intelligent judgment as to what sum to bid for
692 said premises, or what the same would cost him if he were successful in making any bid, or what property he acquired by any successful bid.

That the premises would have sold for more than $1,000,000 if proposed purchasers could have known the approximate amount of said

debts and approximately what equipment and personal property he would get if he were successful in his bid.

6th. The said Turner hereby pledges himself to this court that if said premises are offered for sale again by this court that they will sell for more than $1,000,000 the next time. That he will secure this pledge by a reasonable bond, with good and sufficient sureties, that said premises shall sell for more next time, or he will pay the cost of said sale and such sum as they the next time sell for less than $1,000,000.

7th. That the original proceedings under which said sale was had under a decree of the circuit court of the United States were brought in one of the State courts of Indiana and one of the State courts of Illinois, said Indianapolis, Bloomington & Western Railroad extend-
693 ing into both of said States, for the purpose of establishing certain prior liens against said railroad company. That such proceedings were had thereon that a receiver was appointed by said State courts. Several terms of court after issues were made up in said cause or causes and ready for hearing in said State court or courts said cause or causes were removed to the United States district court for the southern district of Illinois and district of Indiana under the removal act of Congress of 1875; that under said removal act said Federal court or courts did not and could not acquire jurisdiction of said causes for the reasons—

A. That the petition for removal of said cause or causes was not filed in said State court or courts before or at the time at which said causes could be first tried, but long after the same were ready for hearing, and could have been tried and had been set for hearing from term to term, as will more fully appear from the records of said cause now in this court remaining, to which reference is here made.

B. That the controversy in said cause was not wholly between citizens of different States, and could not be fully determined as between them.

694 8th. That prior to the commencement of the proceedings in the State courts, upon which a receiver was appointed as aforesaid, the said Indianapolis, Bloomington & Western Railroad Company executed a chattel mortgage to one Thomas, who was then and has since continued to be a citizen and resident of the city of Philadelphia, and State of Pennsylvania, to secure a large sum of money, to wit, several million dollars; and at the time of said proceedings in the State courts said chattel mortgage was in full force and effect and valid according to the laws of the States of Indiana and Illinois, and was a prior and superior lien upon the rolling stock and personal property of said railroad company; and that such chattel mortgage as such prior lien, or said other claims set up in said original bill as liens, have not been affected, released, or in any wise canceled, nor the rights of said Thomas as trustee thereof or said Turner Brothers in any wise adjudicated or determined in this proceeding, although the same were involved in the issues tendered by the original bill; that the circuit court of the United States never acquired or had any jurisdiction over the said Thomas; all of which more fully appears in the proceed-
695 ings had and the pleadings and records now on file and remaining in this cause, to which reference is here made.

9th. In support of said exceptions the said Turner asks leave to refer to the records of this court and to the receiver's accounts and reports in this case, and to be allowed to produce witnesses and affidavits to sustain the same.

11th. The purchaser at said sale was a certain committee acting as

agents of the bondholders of said railroad company, although no provision contained in the decree under which said sale was had authorized the parties to said decree to bid at a sale thereunder, and the said masters' report does not show who are the principals for whose use the said property was purchased, and does not disclose what interest each of the parties beneficially interested in said purchase has, nor what amount of the purchase money was furnished by each one of the said parties; so that the court is dealing with agents openly of undisclosed principals.

(Endorsed:) Filed November 30th, 1878.

J. A. JONES, *Clerk.*

696 And afterwards, to wit, on Monday, the 23rd day of December, A. D. 1878, the following further proceedings were had and entered of record in said cause, to wit:

697 *Decree approving report of sale of main line.*

In the circuit court of the United States for the southern district of Illinois.

MONDAY, *December 23rd, A. D.* 1878.

Present, Hon. Thomas Drummond, presiding judge, Hon. Samuel H. Treat, district judge.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } Original bill.

FARMERS' LOAN AND TRUST COMPANY
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } Cross-bill.

The master in chancery of this court and the master in chancery of the United States circuit court for the district of Indiana having filed in court on the 1st day of November, 1878, the report of the sale of the main line of railroad running from Indianapolis, in the State of Indiana, to the city of Pekin, in the State of Illinois, made by them in pursuance of the decree in this case, and exceptions having been filed to
698 said report by C. W. Smith, Robert Turner, and others, representing the extension, by Joseph T. Thomas, James Turner, Ophelia Turner, and The Indianapolis, Bloomington and Western Railway Company, and said exceptions having been argued by counsel, and now the court being fully advised—

It is hereby ordered, adjudged, and decreed that the said exceptions, and each and every of them, be, and the same are hereby, overruled; and that the said report of the said masters be, and the same is hereby, in all things confirmed and approved.

It is further ordered that the master in chancery of this court do pay out of the fund in the registry of the court arising from said sale the costs due to the officers of this court in this cause taxed at the sum of $\$$.

That he further retain as his compensation for making said sale, advertising, and reporting the same, and all compensation due him as such master growing out of said sale, the sum of $2,500.

It is further ordered that the said master of this court, in connection with the master in chancery of the United States circuit court for the district of Indiana, out of said fund pay to the Farmers' Loan
699 and Trust Company, as compensation for its services as trustee, the sum of $5,000, and to the said Farmers' Loan and Trust Company, for its incidental expenses and disbursements in carrying on and managing this suit, the further sum of $6,074. And to the said Farmers' Loan and Trust Company, as part of its counsel and solicitors' fees in carrying on this litigation, the further sum of $22,000. And to Wiley and Parker, of counsel herein, as their counsel fees, the sum of $6,000. And to Brown and Campbell, of counsel herein, the sum of $6,000, as provided for in said decree. And that the residue of said fund in the registry of the court arising from said sale remain subject to the further order of the court.

And now come the counsel for said exceptors, James Turner, Ophelia Turner, Joseph T. Thomas, and The Indianapolis, Bloomington and Western Railway in open , and except to so much of the foregoing as overrules their exceptions to the said sale, and prays an appeal therefrom to the Supreme Court of the United States, which is allowed, subject to the objections of the Farmers' Loan and Trust Company and without prejudice to the same.

700 *Petition of Joseph T. Thomas.*

Circuit court of the United States, southern district of Illinois and the district of Indiana.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND Western Railway Company et al. } In equity. Original bill.

FARMERS' LOAN AND TRUST COMPANY, trustees,
vs.
SAME. } Cross-bill.

Petition of Joseph T. Thomas.

Trustee to rehear and foreclose premises embraced in chattel mortgage, in the circuit court of the United States for the southern district of Illinois and district of Indiana.

Your orator, Joseph T. Thomas, one of the defendants in the original bill and also in the cross-bill of the Farmers' Loan and Trust Company filed in this cause, by leave of the court first had and obtained, respectfully shows to this court:

701 First. That he is a citizen of the city of Philadelphia and of the State of Pennsylvania, and that he is the individual named in Exhibit A, attached to this complaint, as the trustee to whom said mortgage, dated November 16, 1874, was made by the said defendant railway company. That said mortgage, for convenience, is hereinafter called "the chattel mortgage."

Second. The petitioner avers, upon information and belief, that the complain'ts in the original bill, Malcomb C. Turner and others, filed their bill of complaint against the defendants in this cause, The Indianapolis, Bloomington & Western Railway Company, the Farmers' Loan

and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and your petitioner, Joseph T. Thomas, in the circuit court of the State of Illinois for the county of De Witt, on or about the 18th day of November, 1874, and also on the same day in the circuit court of the State of Indiana for the county of Montgomery, alleging an indebtedness from the railway company to the complainants of a large sum of money, viz, $865,000, and interest thereon, and alleging a lien as security for the payment thereof prior to the lien of the said trust company and to the claims of said Dennison, Smith, and Thomas, and praying for an accounting as to the debts, liens, and priorities of creditors, and for a foreclosure of all the mortgages on the property represented
702 by the parties defendant, and for the sale of the property and the appointment of a receiver.

To copies of which complaint, now on file in this court and cause, the petitioner begs leave to refer as if the same were here set forth at length.

Third. That on the 30th day of January, 1875, the Farmers' Loan and Trust Company, one of the defendants, filed in the State court in said De Witt County, the circuit court, its cross-bill in this suit against the railway company, praying for the foreclosure and sale of said railway upon the mortgages made to it by the defendant railway company and by the Danville, Urbana, Bloomington and Pekin Railroad Company, which last-named mortgage was made April 1st, 1869.

On the 25th day of April, 1876, the said Farmers' Loan and Trust Company filed in said State court its third amended and supplemental cross-bill, asking that the same may be substituted for the original supplemental and cross-bill.

Said trust company, on said 25th day of April, 1876, filed its petition to remove this cause into this court; it was then and there removed, according to the prayer of the petition, from each of said State courts to this court.

To which cross-bill, answers to the original bill and to the cross-
703 bill, and all other proceedings thereunder, on file in this cause, the petitioner asks leave to refer, as if the same were here set forth at length.

Fourth. That on or about the 1st day of April, 1869, the Danville, Urbana, Bloomington, and Pekin Railroad Company made its mortgage to the defendants, the Farmers' Loan and Trust Company, trustee, and in trust to secure the payment of $2,000,000, and embraced therein a considerable portion of the same premises as are embraced in the mortgages hereinafter named; thereafter, on or about July 12th, 1869, the said last-named railroad corporation went out of existence, and became merged into that of a corporation called the Indianapolis, Bloomington and Western Railway Company, and from that time forward had not the power or capacity to acquire any additional property; that afterwards, on or about the first day of October, 1869, the defendant the said Indianapolis, Bloomington and Western Railway Company, the successor company, made a second mortgage to the defendant the Farmers' Loan and Trust Company, trustees, in trust to secure the payment of $5,000,000.

Afterwards, on or about the 1st day of October, 1870, the said successor railway company, one of the defendants herein, made a third mortgage to Benjamin E. Smith and William Dennison, trustees,
704 and defendants herein, to secure the payment of $1,500,000.

Afterwards, on or about June 28th, 1872, the said last-named successor railway company made a fourth mortgage to William Dennison

and Robert Turner, trustees, defendants herein, in trust to secure the payment of $5,500,000, to copies of which now on file in this case reference is made.

Fifth. Your petitioner avers that afterwards, on or about the 16th day of November, 1874, the said last-named successor railway company made a fifth mortgage, called a chattel mortgage, to your petitioner, Joseph T. Thomas, trustee, in trust to secure the payment of a large amount of indebtedness, the exact amount not then easily or readily obtainable.

A copy of which mortgage is hereunto attached, marked Exhibit A, of all its equipment, rolling stock, machinery, tools, wood, coal, furniture, safes, iron rails not in tracks, ties, timber, iron, steel, spikes, wheels, oil, waste, stationary, office, station, and railway supplies, and all other personal property of any kind or description, in trust to secure the payment of the debts due to your petitioner, or to his assigns, and to various other parties named therein.

Your petitioner avers that all of said several mortgages, cross-bills, and supplemental cross bill are on file and of record in this court,
705 and to which your petitioner begs leave to refer as fully and with the same effect as if they were here set forth at length.

Sixth. Your petitioner avers that the said debtor railroad company has never paid the debts purporting to be secured by said chattel mortgage, but that the same are now outstanding and justly due, and are to a very large amount, the exact amount is to your petitioner unknown; but your petitioner is informed and believes that the sum now due and unpaid, and purporting to be secured b ysaid mortgage, exceeds the sum of $2,000,000.

Your petitioner avers, upon information and belief, that said chattel mortgage was duly recorded wherever it was required by law to be recorded, and that the report of your receiver in this case made to the court shows that demand has been made on him to pay the debts secured thereby; that said demand was made on the 16th day of November, 1886. (See p. 11 of receiver's 1st annual report.)

Your petitioner avers, upon information and belief, that neither of the mortgages above recited as being made to The Farmers' Loan and Trust Company, or the mortgages to Smith and Dennison, or the mortgages to Dennison and Turner were ever recorded in the State of Illinois as mortgages of personal property are required to be recorded by the laws of that State, which is the State where the mortagor resided and where
706 the property embraced in the mortgages was located; wherefore the petitioner avers that said mortgages could have no validity as liens on personal property.

Seventh. Your petitioner is informed and believes, and therefore avers, that a default was taken and entered up against him in the above recited proceedings and cause, both in the original bill and the cross-bill of The Farmers' Loan and Trust Company.

Your petitioner is informed that said default was taken while said cause was pending in the State court, and he here avers that a default was taken against him in the State court and in this court on or about November 15th, 1876.

Your petitioner avers that he was not summoned or served with a copy of the original bill or cross-bill, and that he did not receive any notice required to be sent to him, by mail or otherwise, and that he comes within the description of defendants for whom relief is provided by section 19, chapter 22, chancery, of the Revised Statutes of Illinois.

Eighth. Your petitioner avers that a final decree was entered in the

original and cross-bill in this cause by this court at its June term, 1877, viz, July 18th, 1877, and at the January term, 1878, of this court,
707 viz, May 8th, 1878, said decree was modified and amended in favor of The Farmers' Loan and Trust Company, which decree, among other things, directed the sale of a very large amount of property embraced in and covered by the chattel mortgage made to your petitioner.

That this court did not, by said decree, or by any order, judgment, or decree, in any manner hear or determine your petitioner's rights under said chattel mortgage, although the original bill was brought by said Turner, one of the cestui que trust of your petitioner, to get the aid of the court to force and maintain the right of your petitioner thereunder.

Ninth. Your petitioner avers, upon information and belief, that after said default was entered against him in said Farmers' Loan and Trust Company's cross-bill that said trust company amended its cross-bill by filing a supplemental or additional cross-bill, and also amended the decree obtained by it without any notice to your petitioner.

Your petitioner avers that it was erroneous for said Farmers' Loan and Trust Company to amend or add new matter to its cross-bill after entering a default against your petitioner, or to take a different decree than the one proposed at the time said default was entered, unless said trust company summoned your petitioner again into court and
708 give him opportunity to answer, plead, or otherwise be heard on said new matter.

Tenth. Your petitioner avers that the Danville, Urbana, Bloomington and Pekin Railroad Company came into existence February 28th, 1867; that it made the mortgage of $2,000,000, described in the cross-bill of The Farmers' Loan and Trust Company, April 1st, 1869; that it was consolidated with the Indianapolis, Crawfordsville and Danville Railroad Company July 12th, 1869, and from that time ceased to exist as a corporation, and it then and there became dead in law and in fact, and could not and did not acquire any property after that time; that its then existing property passed to and became the property of its representative and successor, The Indianapolis, Bloomington and Western Railway Company, one of the defendants herein.

Eleventh. Your petitioner avers that the mortgage made by the defendant, The Indianapolis, Bloomington and Western Railway Company, to said trust company, in so far as it was an executory contract, did not and could not give to said trust company any lien upon the equipment and rolling stock and personal property of said railway company acquired after the adoption of the present constitution of the State of Illinois, viz, July 1st, 1870, and that the said Farmers' Loan and
709 Trust Company had not and could not have any lien upon the after acquired property, i. e., upon the property acquired by the railway company after the adoption of said constitution, because of the failure to record said mortgages as required by the laws of Illinois regarding the record of liens on personal property.

Your petitioner avers that said after acquired property is very large in amount and value, and the same is conveyed to your petitioner as trustee by and under said chattel mortgage, which is made a part hereof; that a schedule or list of the same is to be found in an inventory made by the receiver of this court in this cause, a copy of which is attached to his report made to the State courts, March 19th, 1878, and is on file in this case in this court, to which the petitioner asks leave to refer and made a part hereof.

Twelfth. Your petitioner avers that on the 16th day of November, 1876, he made demand of your receiver in this cause for possession of

all the personal property embraced in said chattel mortgage of every kind and description; that your receiver refused to surrender it or any portion thereof; that since that time, viz, October 30th, 1878, said Farmers' Loan and Trust Company have caused said personal property to be sold, and that Austin Corbin, Giles E. Taintor and Josiah
710 B. Blossom have purchased the same as agents of and a committee for certain of the cestui que trust said Farmers' Loan and Trust Company.

Whereby your petitioner avers and claims that the cross-complainants in said suit, The Farmers' Loan and Trust Company, and the said Corbin, Taintor, and Blossom became liable to your petitioner for the use and value thereof.

Thirteenth. Your petitioner is informed and believes that said Farmers' Loan and Trust Company, the said Benjamin E. Smith and William Dennison, trustees, or their successors in said trust, the said William Dennison and Robert Turner, trustees, or their successors in said trust, notwithstanding the facts above and herein set forth by reason of the respective mortgages hereinbefore set forth, each severally claim some right and interest in and to the property mortgaged, as hereinbefore described, to your petitioner.

That said Farmers' Loan and Trust Company and the said Dennison & Smith, trustees, or the successors of the latter in said trust, have carried their claims into execution by advertising and selling a large amount of property which is embraced in and covered by the mortgage to your petitioner.

That the claims of said Farmers' Loan and Trust Company and of the said Dennison, Smith, Robert Turner, or their successors, are
711 a cloud upon the title and right of your petitioner, and prevents him or his cestui que trust from having and enjoying the full right and benefits in and to said property embraced in said chattel mortgage.

Fourteenth. Your petitioner avers that no answer or other pleadings have been had in this case regarding the chattel mortgage, with the petitioner's knowledge or consent, and that he has never authorized or had knowledge of any solicitor or counsel of this court so using his name as trustee or otherwise of said chattel mortgage.

Wherefore your petitioner humbly prays this court to take his case into consideration, and upon consideration of its merits—

1st. That this court will require all the parties in the original bill mentioned and in the cross-bill, and in the various amendments or supplemental bills filed by The Farmers' Loan and Trust Company, and their successors in the office of trustees, to answer all the allegations herein set forth. The petitioner waives the necessity of their respective answers being on the oath of said parties.

2d. That this court will ascertain and give your petitioner judgment for such amount as is justly due to him, and find and declare the
712 same to be a first lien upon the property embraced in and covered by said chattel mortgage.

3d. That you give whatever sum is found to be due him its proper lien upon the mortgaged premises or upon the proceeds derived from a sale thereof.

4th. That this court will by proper order, decree, or other process of the court, aid the petitioner in enforcing any lien, by sale or otherwise, which he has upon the mortgaged premises, or upon the proceeds derived from its earnings, or from the sale of said mortgaged premises.

5th. That this court will require an account from the Farmers' Loan

and Trust Company for each and every article of property which it has caused to be sold on which the petitioner had a superior lien, and that upon ascertaining its value it will enter up its judgment against said Farmers' Loan and Trust Company directing it to pay to your petitioner, or to his successor, in money, the full and just value of said property.

6th. That this court will remove the cloud upon the rights and property of the petitioner in and to all the property embraced in said chattel mortgage.

7th. That the court will direct to be paid to your petitioner such reasonable cost, commissions, expenses, allowances, and charges as
713 the court shall find to be due to him for services and disbursements in and for the performance of his duties and those of his solicitors, attorneys, and employees in the execution of said mortgage and the prosecution of this cause.

8th. That this court will by its proper decree forever bar and foreclose said debtor railway company, and all persons claiming by, through, or under it, from all equity of redemption and claim upon, in, or to said property embraced in said chattel mortgage.

9th. That if the court is of the opinion that it has already heard the matter connected with the chattel mortgage, that it will rehear the same.

10th. That the court will grant such other further or different relief as to equity appertain, and your petitioner, as in duty bound, will ever pray.

December 21st, 1878.

JOSEPH T. THOMAS,
Trustee.

GEORGE W. KRETZINGER, *Solicitor.*
N. A. COWDREY, *Counsel.*

714 STATE OF NEW YORK,
City of New York, ss:

On this 4th day of January, 1879, personally appeared Joseph T. Thomas, the signer of the foregoing petition, and made affirmation that he had read the same and that the contents thereof were true to the best of his knowledge & belief.

JOSEPH T. THOMAS.

Affirmed to before me the day and year before named.
[SEAL.] E. R. McCARTY, No. 58,
Notary Public in & for City & County of New York.

EXHIBIT A, attached to the supplemental bill of Joseph T. Thomas, trustee.

This indenture, made this sixteenth day of November, A. D. one thousand eight hundred and seventy-four, between the Indianapolis, Bloomington and Western Railway Company, a corporation organized and existing under the laws of the State of Indiana and Illinois, and having its principal office in the State of Illinois, at the city of Urbana, in Champaign County, and having its principal place of business in the State of Indiana, in the city of Indianapolis, in the county of
715 Marion, party of the first part, and Joseph T. Thomas, of Philadelphia, Pennsylvania, trustee as hereinafter mentioned, as party of the second part witnesseth:

That whereas the said party of the first part has in operation a line of railway extending from Indianapolis, Indiana, into and

through the counties of Marion, Hendricks, Boone, Montgomery, Fountain, and Warren, in the State last aforesaid, to the western boundary line of Indiana, and from thence westwardly through the counties of Vermillion, Champaign, Piatt, De Witt, McLean, and Tazewell, and also extending from Champaign, in said county of Champaign, to Decatur, in Macon County, and also to Havana, in Mason County, Illinois;

And whereas in the construction and purchase of material, supplies, and equipment for the use and operation of the said line of railway the said corporation, party of the first part, has incurred large liabilities in the shape of promissory notes, acceptances, and adjusted accounts, which said obligations so incurred for the common benefit of said property it is desired by the said party of the first part shall be secured so far as practicable upon the property of the corporation embraced in this conveyance, without any preference for any one of such creditors over any other, but putting all of such liabilities upon a common footing, so far as the security of this indenture is concerned, upon the particular property and income and tolls which are hereinafter
716 specified and intended to be included in this indenture, and as such common security to be available to the party of the second part for the use, benefit, and behoof of the creditors of the said Indianapolis, Bloomington and Western Railway Company holding such notes, obligations, and acceptances for value, but upon the conditions and trust in the indenture contained:

Now, therefore, this indenture witnesseth that, in consideration of the premises and of one dollar to the said party of the first part in hand paid at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, and in order to execute the purpose and intent aforesaid and to secure the payment to the several persons and corporations who may now be, or at any time hereafter become, the owners or holders of the said several notes, acceptances, or obligations, which are more particularly set forth and included in a schedule marked A, which is hereunto attached and is intended to be, and is hereby declared to be, a part of this indenture as fully in all respects as though the same were fully incorporated herein, in accordance with the condition and trust here-inafter set forth, the said party of the first part hath bargained, sold, assigned, transferred, conveyed, and set over, and by these presents doth bargain, sell, assign, transfer, convey, and set over unto the said party of the second part, as such trustee as aforesaid, and to his lawful successors in said trust, all and singular the engines, cars,
717 machinery, tools, wood, coal, furniture, safes, iron rails not in tracks, ties, timber, iron, steel, spikes, wheels, oil, waste, stationary, office, stations, and railway supplies, and all other personal property of any kind or description now owned by the said party of the first part, or in or to which it has any right, title or equity, it being the intent by this indenture to embrace all personal property or fixtures of all and every kind, character, or description in any manner now belonging to the said party of the first part, together with the tolls, receipts, and income to be derived from the use of said property or any part thereof, to have and to hold all and singular the said property, goods, chattels, and tolls, and income aforesaid, unto the said party of the second part, as trustee, for the benefit and security of the said creditors intended to be provided for by these presents, in accordance with the conditions and trusts hereinafter set forth; that is to say, upon the condition that if the said party of the first part shall well and truly pay, or cause to be paid, all and singular the said notes, bills, ac-

ceptances, and obligation included in the said schedule A, and all renewals of the same, together with the agreed interest upon said several demands, then and in that case the rights, interest, title, and lien hereby granted in said goods, chattels, and the income therefrom shall cease and determine. And this conveyance is upon the further trust
that until the said party of the first part shall make default in
718 the payment of said notes, bills, obligations, or renewals of the same, intended to be hereby secured, or until the exercise of the discretion of the said party of the second , as hereinafter set forth, it shall be lawful for the said party of the first part to remain in and retain full possession of all and singular the said goods, chattels, property, and tolls hereby mortgaged; provided always, that such possession shall not continue more than two years from this date, unless the indebtedness hereby secured shall before that time be fully paid off, discharged, or satisfied; and provided further, that in case the said party of the first part shall at any time sell or dispose, or attempt to sell or dispose, of any of the property hereby mortgaged, or to apply the same to any other use or purpose than for the construction or maintena'ce, or use and operation of the said railroad, or in case the said party of the first part shall at any time be subject to judgment, execution, attachment, sequestration, or other lien or legal process, under or by virtue of which the said property and tolls hereby conveyed shall be seized or exposed to seizure, lein, or sale, then and in that event it shall be lawful for the party of the second part, or his successors for the time being, at his or their discretion, to enter upon and take actual possession of all and singular the goods, chattels, and property hereby mortgaged, and thereafter maintain complete and exclusive possession and control of each and every part of such mortgaged property, anything hereinbefore to the contrary notwithstanding, and to sell
719 such property in such manner and upon such notice as may be proper in the discretion of such trustee, and apply the proceeds thereof pro rata to the payment and satisfaction of the several notes, bills, and obligations then unpaid and outstanding, which are at large set forth in said schedule A and intended to be secured by this indenture, and all re*wards* and substitutions of the same, and such pro rata payment is to be made on such claims irrespectively of whether the same or any thereof are then du*ly* or are unmatured, it being the true intent and meaning of this indenture to place all of such creditors hereby secured on an exact priority as to this security, wholly disregarding when the said debts were severally created or will mature.

And it is further expressly agreed that if the proceeds of such sale are more than sufficient to pay and discharge all and singular the said notes, bills, obligations, or the renewals thereof then outstanding and unpaid, then the party of the second part shall pay over any surplus of such proceeds unto the party of the first part or its successors or assigns.

And it is further expressly agreed, and these presents are upon the express condition, that if the said party of the first part shall at any time prior to any such sale so to be made by the party of the second part, whether before or after entry, make payment of all the then out-
standing notes, bills, obligations, and intended to be hereby se-
720 cured, any renewal of the same, then and thenceforth this indenture and all the estate hereby granted shall become and be utterly void and of no further effect, and the same shall be by such payment wholly annulled and satisfied without any further receipt or entry of satisfaction of record whatever, but shall be if required, en-

tered and satisfied on any record of the same as so satisfied by the party of the second part or his successors in said trust.

And it is further agreed by the parties hereto that the party of the second part and any lawful successor in said trust, being trustee for the time being, shall be responsible only for gross negligence and willful default in the discharge of any duties devolved upon him or them by this indenture, and that in the event of any such possession or sale being made by the party of the second part, or in the event that the said party of the second part shall be compelled, or it is deemed by him advisable at his discretion, to take any legal steps for the protection of the lien and estate hereby vested in him, that he shall be entitled to demand, charge, and receive reasonable and just compensation for his services so rendered, and all just and necessary expenses incurred by him in such duty, including compensation to all agents, servants, and attorneys by such trustee employed for the protection of the estate hereby vested in him, all which sums shall be first paid out of
721 any proceeds of any sale of the property hereby conveyed. In case of the resignation or inability to act of the party of the second part, the board of directors of the party of the first part may appoint a successor, and failing so to appoint, any court of competent jurisdiction, in either of the States of Indiana or Illinois may, on the nomination of creditors holding one-fifth in amount of the total debt intended to be hereby secured, appoint a trustee or trustees to fill such vacancy, and any such appointment by the board of directors, or by such court, shall invest the trustee or trustees so appointed, with all the interest, estate, power, and authority, in the premises, and subject him or them to all and singular the same obligations hereby granted and given to or imposed upon the said party of the second part.

In witness whereof the said Indianapolis, Bloomington and Western Railway Company has caused these presents to be executed and signed by its president, and attested by its secretary in behalf of said company, and have also caused its common or corporate seal to be affixed to this indenture in duplicate.

INDIANAPOLIS, BLOOMINGTON AND
{ I., B. & W. R. R. } WESTERN RAILWAY CO.,
{ CORPORATE SEAL. } By B. E. SMITH, *President.*

Attest: A. P. LEWIS,
Secretary.
Witness: C. W. SMITH.

722 STATE OF ILLINOIS,
Champaign County, ss:

Be it remembered that, on this sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy-four, in the State and county aforesaid, before me, the undersigned, a justice of the peace in and for said county, personally appeared Benjamin E. Smith, to me personally known and known by me to be the president of the Indianapolis, Bloomington and Western Railway Company, and who is personally known to me to be the identical person whose genuine signature is subscribed to the foregoing instrument as having executed the same as such president, and the said Benjamin E. Smith, being by me duly sworn, did depose and say that he lives at Columbus, Ohio, and that he is the president of the said Indianapolis, Bloomington and Western Railway Company; that the seal affixed to the foregoing indenture was and is the corporate seal of said Indianapolis,

Bloomington and Western Railway Company, and that the foregoing instrument was executed, sealed, and delivered under the order and authority of the said corporation; and that he, said Benjamin E. Smith, as such president, did acknowledge that he had executed the said instrument, and signed, sealed, and delivered the same as the free and voluntary act and deed of the said Indianapolis, Bloomington
723 and Western Railway Company, for the uses and purposes herein expressed.

In testimony whereof I have hereunto set my hand and seal as such justice, at the city of Urbana, in the county of Champaign and State of Illinois, this 16th day of November, in the year one thousand eight hundred and seventy-four (1874).

[SEAL.]

JOHN P. TENBROOK,
Justice of the Peace.

SCHEDULE A.—(*Attached to chattel mortgage.*)

June,	1871	Busey Bro	$4,000 00	
Oct.,	1873	Rogers' Loco	12,427 00	4 notes.
Nov.,	"	" "	29,514 11	9 "
"	"	Wyatt & Latham	1,864 65	
Dec.,	"	Rogers' Loco	31,718 34	10 "
Jan.,	1874	" "	26,075 14	8 "
"	"	U. S. Exp	100,000 00	200 bonds B. E. S.
Feb'y,	"	Rogers' Loco	33,572 71	
March,	"	"	32,249 91	
April,	"	"	26,510 44	
May,	"	"	34,131 60	
"	"	A. Gross	8,000 00	15 bonds B. E. S.
June,	"	Rogers' Loco	32,781 47	
July,	"	"	26,945 76	
"	"	James Rayburn	2,750 00	
724 "	"	S. W. Car Co	5,000 00	B. E. S. & C. R. G.
" "	"	West. Car Co	191,614 43	
Aug.,	"	Rogers' Loco	34,690 50	
"	"	Merch't Bank	4,000 00	10 P. and S. bonds, B. E. S. & C. R. G.
"	"	J. J. Lapley	1,000 00	
"	"	Turner Bro	25,000 00	B. E. S. & C. R. G.
"	"	S. W. Car Co	5,000 00	B. E. S. & C. R. G.
"	"	W. H. Smith	7,500 00	28 bonds.
"	"	H. Crea	909 72	
Sept.,	"	Ind'p's Rolling Mill	5,243 90	
"	"	" "	4,575 30	
"	"	Morgan Oil Co	2,196 31	
"	"	Dickason & E	2,576 74	
"	"	C. C. Car Co	6,571 38	
"	"	Rogers' Loco	33,313 03	
Oct.,	"	"	27,381 06	
"	"	R. Ingersoll	1,000 00	
"	"	D. Candus	739 80	
"	"	J. V. Taylor	1,184 12	
"	"	Vose, Dinsmore & Co	5,131 35	B. E. S.
Oct.,	1874	W. H. Smith	15,000 00	27 bonds, C. S. & N. W.
"	"	St. Nicholas Bank	6,000 00	6 I., B. & W., B. E. S., & C. R. G.
"	"	Butterfield & W	1,731 00	
"	"	Snedeker	3,000 00	
"	"	Globe Bank	15,000 00	25 bonds B. E. S. & C. R. G.
"	"	P. P. Car Co	2,207 57	
"	"	Geo. Southers	4,000 00	
"	"	C. S. Slocker	2,784 05	
"	"	Rogers' Loco	10,000 00	B. E. S. & C. R. G.
"	"	Elliott, Sons & Co.	6,000 00	J. & S. Co. & J. H. J., B. E. S., & C. R. G.
"	"	Brown & Blain	6,000 00	
725 "	"	Ind. Rolling Mill	4,932 52	
"	"	E. H. Rood	1,475 70	
"	"	St. Nicholas Bank	5,000 00	10 bonds B. E. S. & C. R. G.
"	"	Mayo & B	4,405 10	
"	"	"	5,000 00	
"	"	Ind'p's Roll. Mill	1,500 00	
"	"	H. Reynolds	4,000 00	
"	"	A. Gunnison & Co	1,649 51	
"	"	J. C. Lake	500 00	
"	"	Geo. Wooden	500 00	
Nov.,	"	Rogers' Loco	20,324 03	
"	"	D. H. Oliver	906 77	
"	"	" g'd'n	1,813 54	
"	"	N. McCarty	2,267 08	

Schedule A.—(Attached to chattel mortgage)—Continued.

"		"	L. & H. Houck	1,000 00	
"		"	R. A. Wellman	1,000 00	
"		"	S. Powers	691 89	
"		"	Smith & Co	1,100 00	
"		"	C. P. R. Co	1,000 00	
		"	Allen Scobb	1,005 00	
"		"	St. Nick. B'k	4,000 00	4 S. 'P. & N.W. b'ds; 4 L.,B. & W; B. E. S. & C. R. G.
"		"	P. P. Car Co	2,207 57	
"		"	B. F. Harris	13,000 00	B. E. S., C. R. G.
"		"	C. S. Stoker	3,000 00	
"		"	Rogers' Loco	10,000 00	B E S & C. R. G.
"		"	U. Rolling Mill	10,000 00	
"		"	Webster, D. & Co	1,568 95	
Nov.,		1874	M. Lassig	633 56	
"		"	Un. Rolling Mill	11,000 00	
"		"	C. T. Raynolds & Co	1,780 35	
	"	"	Brown & Blain	6,000 00	
726	"	"	Howard Bros	2,000 00	
	"	"	Citizens' Nat'l	5,000 00	Bonds B. E. S. & C. R. G.
"		"	Un. Rolling Mill	13,500 00	
"		"	Roger's Loco	10,000 00	B. E. S & C. R. G.
"		"	Jackson & Sharps Co	5,000 00	B. E. S. & C. R. G., I. S. to pay.
"		"	St. Nich. Bank	25,000 00	50 bonds B. E. S. & C. R. G.
"		"	Roger's Loco	16,000 00	
"		"	Ind'p's Roll. Mill	1,500 00	
"		"	A. Gunnison & Co	1,649 51	
"		"	Crerar, Adams & Co	3,000 00	
"		"	Roger's Loco	16,000 00	
"		"	Geo. Worden	2,000 00	
"		"	Ind'p's Roll. Mill	2,000 00	
"		"	S. W. Car Co	1,551 48	
"		"	C. R. Gregg	600 00	
"		"	Ind. Roll. Mill	2,000 00	
"		"	" "	2,000 00	
"		"	Ind. Brass & S. Co	750 00	
"		"	" "	750 00	
"		"	Un. Roll. Mill	1,875 00	
"		"	" "	1,875 00	
"		"	N. W. Phelps	1,459 31	
"		"	"	1,208 87	
"		"	U. W. Phelps	1,210 03	
"		"	Butterfield & W	1,000 00	
"		"	" "	500 00	
"		"	Moss B. Coal	4,000 00	
"		"	Far. B'k Cov	1,000 00	
Dec.,		"	Roger's Loco	13,267 00	
"		"	Smith & Co	1,000 00	
	"	"	S. W. Car Co	2,500 00	
727	Dec.,	"	C. S. Stocker	3,000 00	
"	"	"	Webster, D. & Co	1,783 34	
"		"	Barnum & R. M'f. Co	2,502 96	
"		"	Hinckley Loco. W'ks	7,000 00	
"		"	" "	7,000 00	
Dec.,		1874	Globe Bank	5,000 00	Bonds B. E. S. & C. R. G.
"		"	S. W. Cochrane	422 40	
"		"	A. Gunnison & Co	1,649 51	
"		"	W. J. Worden & Co	3,431 79	
"		"	Layman, Cary & Co	1,725 93	
"		"	Hinckley Loco	7,000 00	
"		"	" "	7,000 00	
"		"	Long Isl nd Rus	10,000 00	20 bonds.
"		"	Morgan Oil Co		
"		"	Geo. Locilten	4,000 00	
"		"	Ind'p's Roll. Mill	3,000 00	
"		"	Wynhams & D	4,000 00	
"		"	Ind. Roll. Mill	4,000 00	
"		"	S. W. Car Co	1,551 48	
"		"	Jackson & Sharps Co	5,000 00	
"		"	Rogers' Loco	16,000 00	
"		"	C. R. Griggs	600 00	
"		"	St. Nich Bank	5,000 00	B. E. S. & C. R. G., 10 bonds.
"		"	Savings Bank, Peoria	5,000 00	
"		"	2nd National	10,000 00	15 bonds, B. E. S. & C. R. G.
"		"	Un. Roll. Mill	1,875 00	
"		"	"	1,875 00	
"		"	"	9,218 31	
"		"	St. Nich. Bank	25,000 00	50 bonds, B. E. S.
"		"	S. W. Car Co	3,000 00	B. E. S. & C. R. G.
	"	"	Moss Bank Coal Co	4,568 29	
728	"	"	" "	2,500 00	
"		"	Far. Cov. Bank	1,000 00	B. E. S. & C. R. G
"		"	2 National, Peoria	10,000 00	15 bonds, B. E. S. & C. R. G.

Schedule A.—(*Attached to chattel mortgage*)—Continued.

"	"	C. F. Lucas	2,075 00	
Jan'y,	1875	Geo. Worden	2,000 00	
"	"	C. R. Griggs	600 00	
"	"	1st National, Springfield	7,800 00	14 bonds, B. E. S. & C. R. G.
"	"	W. J. Mordaunt & Co.	452 70	
"	"	Ind'napolis Rolling Mill	5,000 00	
"	"	Union Rolling Mill Co.	10,000 00	
"	"	B. E. S.	2,500 00	J. H. Jackson acc't Turner Bros.
"	"	Globe Bank	15,000 00	25 bonds, B. E. S. & C. R. G.
"	"	Rogers' Loco	16,000 00	
Jan'y,	1875	Citizen's Bank	10,000 00	
"	"	Geo. Worden	500 00	
"	"	"	722 80	
"	"	Moss B. Coal	4,524 39	
"	"	G. Foster, att'y	200 00	
"	"	Far. Bank Cov	1,500 00	B. E. S. & C. R. G.
"	"	C. F. Lucas	2,075 00	
Feb'y,	1875	S. W. Car Co	2,500 00	
"	"	C. R. Griggs	794 07	
"	"	M. B. C. Co.	4,652 28	
"	"	Geo. Foster, att'y	200 00	
"	"	Union Rolling Mill	12,000 00	B. E. S. & C. R. G., Turner accept.
March,	1875	C. R. G. & B. E. S.	2,500 00	Irving National.
"	"	" " "	5,000 00	Hanover Nat'l Bank.
"	"	" " "	10,000 00	108 bonds Import. & Traders' National.
"	"	" " "	2,384 96	Kurtz & Co.
"	"	B. E. S.	2,500 00	5 bonds Jackson.
April,	1875	B. E. S. & C. R. G.	5,000 00	Gallatin National.
729	"	" " "	2,382 85	4 bonds Southwark Bank, Pa.
"	"	" " "	2,382 85	4 bonds North Am. Co.
	"	Geo. Foster, att'y	200 00	
May,	1875	Center Pl. R. Co.	1,000 00	
"	"	B. E. S.	6,250 00	10 bonds Bank of Republic.
June,	1875	B. E. S. & C. R. G.	2,500 00	Irving National.
"	"	" " "	500 00	Hanover National.
"	"	" " "	10,000 00	Importers and Traders' National.
"	"	" " "	2,408 75	5 bonds Kurtz & Co.
"	"	B. E. S.	7,500 00	Gallatin National.
"	"	" " "	5,000 00	Importers & Traders' National.
"	"	" " "	1,200 00	"
"	"	" " "	2,500 00	5 bonds J. H. Jackson.
"	"	" " "	1,125 00	1st Nat. Sp
"	"	Geo. Foster, att'y	200 00	
July,	1875	B. E. S. & C. R. G.	5,000 00	Gal't'n Nat.
"	"	" " "	2,408 79	4 bonds Southwark National.
"	"	" " "	2,408 79	4 bonds North American.
Aug.,	1875	B. E. S.	6,250 00	10 bonds Bank of Republic.
Sept.,	1875	" " "	7,500 00	Gal't'n Nat.
"	"	" " "	5,000 00	Imp. & Tra.
Sept.,	1875	" " "	1,250 00	Im. & Tra.
"	"	" " "	2,500 00	5 bonds Jackson.
"	"	" " "	1,125 00	2 bonds 1st Nat'l Springfield.
"	"	B. E. S. & C. R. G.	2,500 00	Irving Nat'l.
"	"	" " " "	10,000 00	Imp & Tra.
"	"	" " "	2,448 00	5 bonds Kurtz & Co.
Oct.,	1875	" " " " "	5,000 00	Gal't'n Nat'l.
"	"	" " " " "	2,488 49	4 bonds Southwark National.
"	"	" " " " "	2,448 49	4 bonds Bank North America.
"	"	B. E. S.	6,250 00	12 bonds Bank of Republic.
730	"	D. H. Oliver	969 30	
"	"	Do g'd'n	1,938 62	
"	"	N. McCarty	2,423 42	
"	"	L. & H. Houck	1,000 00	
"	"	G. Wooden	1,500 00	
Dec.,	1875	C. R. G. & B. E. S.	2,500 00	Irving Nat'l.
"	"	" " "	10,000 00	Imp & Tra'ders' Nat.
"	"	" "	2,488 00	5 bonds Kurtz & Co.
"	"	B. E. S.	7,500 00	Gallatin Nat'l.
"	"	"	5,000 00	Imp. & Trad.
"	"	"	1,250 00	"
"	"	"	1,125 00	2 bonds 1st Nat. Sp.
Jan'y,	1876	B. E. S., C. R. G.	5,000 00	Gallatin Nat'l.
"	"	"	2,488 19	4 bonds Southwark Nat.
"	"	"	2,488 00	4 bonds B'k of N. A.
Feb.,	"	B. E. S.	6,250 00	B'k of Republic.
M'ch	"	"	7,500 00	Gallatin Nat'l.
"	"	"	5,000 00	Imp & Traders.
"	"	"	1,250 00	"
"	"	"	1,125 00	2 bonds 1st Nat'l Sp.
June,	"	J. A. Harpham	2,250 00	
Nov.,	"	D. H. Oliver	1,031 84	
"	"	Do. g'd'n.	2,063 69	
"	"	N. McCarty	2,579 78	

Schedule A.—(*Attached to chattel mortgage*)—Continued.

Sept.,	1873	B. F. Harris.....	2, 000 00	B. E. S. & C. R. G.
"	"	Thompson, Gregg & Co.	2, 700 00	
"	"	Account of Smith, Griggs & Co. adjusted by order of board at about.....	550, 000 00	
	1874			
June	30	1st Nat. B'k of Troy ..	10, 000 00	
"	26	J. T. Agnew	10, 000 00	
731 "	30	H. W. Welch.....	50, 000 00	
"	30	Drexel & Co.....	50, 000 00	
Sept.	9	H. C. Bennett	10, 000 00	
	9	Nat. B'k of Bridgeport, Ct.	10, 000 00	
July	26	Continental B'k.....	10, 000 00	
"	"	4th National Bank	60, 000 00	
	1873.			
Sept.	1	Turner Brothers.....	430, 899 58	
Oct.	1	"	46, 908 32	
Nov.	6	"	55, 431 76	
Dec.	31	"	19, 834 06	
	1874.	.....		
Jan.	2	"	62, 0s2 69	
"	"	" open acc't ...	20, 076 60	

Filed for record Nov. 16, 1874, at 10½ o'clock a. m.

STATE OF ILLINOIS,
Champaign County, ss:

I, J. W. Porter, clerk of circuit court, and ex-officio recorder in and for the said county, in the State aforesaid, do hereby certify that the within and foregoing is a true, full, correct, and complete copy of instrument executed by Indianapolis, Bloomington and Western Railway, by its president, &c., to Joseph T. Thomas, trustee, found in book 24 of m't'g's, on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, as appears of record in my said office; said copy aforesaid embracing pages numbering from 1 to 19.

732 In testimony whereof, I have hereunto set my hand, and official seal of office, at Urbana, this fourth (4th) day of October, A. D. 1878.

J. W. PORTER,
Recorder of Deeds, &c.

(Indorsed:) Filed January 4, 1879. J. A. Jones, cl'k.

733 *Petition for appeal to Supreme Court.*

Circuit court of the United States, southern district of Illinois and the district of Indiana.

MALCOMB C. TURNER ET AL., COMPLAINANTS,
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al., defendants.
} In equity. Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTees, complainants by cross-bill,
vs.
SAME.
} Cross-bill.

Petition of James Turner and the Indianapolis, Bloomington and Western Railway Company for an appeal to the Supreme Court of the United States.

To the honorable judge of the circuit court of the United States for the southern district of Illinois and the district of Indiana:

The petition of James Turner, of the city of New York, and the Indianapolis, Bloomington and Western Railroad Company, respectfully shows:

That the petitioners, together with The Farmers' Loan and Trust Company, William Bowen, William T. Sandusky, Amos Connoway, Edward Goggle, Christian Grove, Wm. R. Arthur, Ellen Wright, Antye Raub, Isaac Tillotson, Michael Schwartze, Silas T. White, L. Bartley Rodenbaugh, William C. Smith, Lewis Gordon, Amasa J. Merriman, Edwin C. Brewer, John S. Gillepsie, James Raburn, jr., William J. Rhodes, Aaron P. Rhodes, Charlton M. Waters, Oliver Pease, Silas Waters, Henry Long, Jonathan Long, Jackson Oliver, Elias Landis, Ann Drury Thompson, Malcomb C. Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Isaac Decker, J. Augustus Johnson, Williams, Burr & Capen, Brown & Campbell, Wiley & Parker, Rogers Locomotive Works, Western Car Company, Austin Corbin, Giles E. Taintor, & Josiah B. Blossom, committee of certain bondholders and others to the petitioners unknown, are and were parties to the questions involved in the suits named at the head hereof.

That the matters in controversey exceeded the sum of five thousand dollars.

That the court in the above-entitled causes entered a final judgment therein confirming the sale of the mortgaged premises on or about the 23rd day of December, 1878.

That your petitioners are each of them aggrieved by the judgment of said circuit court.

And pray for an appeal to the next term of the Supreme Court of the United States to be held at the city of Washington, D. C., on the second Monday of October, 1879.

They herewith tender a good and sufficient bond in the penal sum of five thousand dollars as security for the cost which may be allowed against them in said appeal.

Jan. 16th, 1879.

INDIANAPOLIS, BLOOMINGTON & WESTERN RAILWAY COMPANY,
By N. A. COWDREY, *Att'y.*

(Endorsed:) Filed February 3, 1879. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 3rd day of February, at the January term of said court, A. D. 1879, the following further proceedings were had and entered of record in said cause, to wit:

Order allowing appeal.

Circuit court of the United States, southern district of Illinois and the district of Indiana.

MALCOLM C. TURNER ET AL., COMPLAINANTS, *vs.* THE INDIANAPOLIS, BLOOMINGTON AND WESTern Railway Company et al., defendants.	In equity. Original bill.
THE FARMERS' LOAN AND TRUST COMPANY, trustees, complainants by cross-bill. *vs.* SAME.	Cross-bill.

And now this cause coming on to be heard upon the petition of James

Turner and The Indianapolis, Bloomington and Western Railway Company for an appeal to the Supreme Court of the United States from the judgment of this court heretofore entered in the above-entitled cause, on or about the twenty-third day of December, A. D. 1878, confirming the sale of the railroad property of the Indianapolis, Bloomington and *and* Western Railway Company, and the court being fully advised in the premises, the said prayer for an appeal from the decree or judgment of this court confirming said sale is hereby allowed; and the appeal bond offered by the said petitioner, the said James
737 Turner and the said Indianapolis, Bloomington and Western Railway Company, signed by Daniel Butterfield and J. K. Roberts, is hereby approved, said bond not to operate as a supersedeas.

738 *Bond on appeal.*

Circuit court of the United States, southern district of Illinois and district of Indiana.

MALCOLM C. TURNER ET AL.
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } Original bill.

FARMERS' LOAN & TRUST COMPANY
vs.
SAME. } Cross-bill.

Bond on appeal.

Know all men by these presents, that we are held and firmly bound unto the clerk of the circuit court of the United States for the southern district of Illinois, and the clerk of the circuit court of the United States for the district of Indiana, in trust for whom it may concern, in the full and just sum of five thousand dollars, to be paid to the said clerks, or to either of them, or to his or their successors in office; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents,
739 sealed with our seals and dated this 25th day of January, A. D. 1879.

Whereas lately, at the November term, 1878, of the circuit court of the United States held at Indianapolis, in the district of Indiana, and at the January term of the circuit court for the southern district of Illinois, viz, December 23rd, 1878, in a suit pending in said court between the parties named at the head of this obligation, and in which suit James Turner was complainant on the original bill, and defendant on the cross-bill, and intervenor by petition in the suit, in which suits and proceedings judgment was rendered against the said James Turner and against the said Indianapolis, Bloomington and Western Railway Company, and the said Turner and the said railway company having taken an appeal from said judgment of the circuit court to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October, 1879:

Now the condition of the above obligation is such that if the said Turner and the said railway company shall prosecute said appeal to effect, and pay all cost if they fail to make good their appeal, then the

above obligation to be void; otherwise to remain in full force and virtue.

740 DANIEL BUTTERFIELD. [L. S.]
I. K. ROBERTS. [L. S.]

Sealed and delivered in presence of—
N. A. COWDREY.

CITY AND STATE OF NEW YORK, *ss:*

On this 25th day of January, 1879, personally appeared before the undersigned authority Daniel Butterfield and Isaac K. Roberts, who, each for himself, made oath that he was worth the sum of ten thousand dollars over and above all debts and claims against him; that they each are holders of real estate in value more than said sum of ten thousand dollars.

[L. S.] JAS. W. HALE.
Public Notary, 69 Wall st.

I am not personally cognizant of the truth of the matters set forth in the foregoing affidavit; but from what I know of Mr. Butterfield and Mr. Roberts, I should accept as true the statements therein made.
January 25, 1879.

SAM'L BLACHFORD,
Circuit Judge.

Approved Feb. 3, '79.

THOMAS DRUMMOND.

(Endorsed:) Filed February 3, 1879. J. A. Jones, clerk.

741 *Report of sale of extension.*

In the United States circuit court, southern district of Illinois.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al. } Original bill. In chancery.

and

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al. } Cross-bill.

and

CHARLES W. SMITH AND ROBERT TURNER, trustees,
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al. } Cross-bill.

The undersigned, the master appointed by the circuit court of the United States for the southern district of Illinois, and charged with the duty of making the sale herein, respectfully reports: That pursuant to the terms of said decree, and the modification thereof herein heretofore entered, he gave notice that he would sell the said property as

742 described in said decree, and upon the terms and conditions in the same set forth and prescribed, at the door of the court-room of said United States circuit court at Springfield, Sangamon County, Illinois, at ten o'clock in the forenoon of Thursday, February sixth, eighteen hundred and seventy-nine, by publishing the same in the Daily Illinois State Register, a daily newspaper of general circulation printed and published in the city of Springfield and State of Illinois; also by publishing the same in the Indianapolis Journal, a daily newspaper of general circulation printed and published in the city of Indianapolis, in the State of Indiana; also by publishing the same in the Evening Post, a daily paper of general circulation printed and published in the city of New York and State of New York; that said publications of notice in said newspapers were made once each week for four consecutive weeks in each of said newspapers, the first insertion of which said publication was more than thirty days before the said sixth day of February, A. D. eighteen hundred and seventy-nine, said publications of notice being in all respects according to the provisions of said decree of sale and the modifications thereof made by said court May eleventh, eighteen hundred and seventy-eight, and that after having given said notices, and pursuant thereto and to said decree, the undersigned
743 attended in person, at the city of Springfield, in said county of Sangamon and State of Illinois, and at the door of the court-room of said United States circuit court at Springfield, Illinois, at ten o'clock in the forenoon of Thursday, February sixth, eighteen hundred and seventy-nine, in the presence of a number of persons attending said sale and having the opportunity to bid thereat, and did then and there at public outcry openly offer and expose for sale, upon the terms and provisions of said decree, the said property known as The Indianapolis, Bloomington & Western Railway Extension, with its franchises, rights, and privileges as described in the printed paper which was read by the master at the time and in the presence and hearing of the persons so assembled, which said printed paper reads in the words and figures following, to wit:

744 [Legal.]

Henry Crawford, McDonald & Butler, sol's.

Master's sale.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court of the United States for the southern district of Illinois. In chancery.

MALCOLM C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company and others. } Original bill.

CHARLES W. SMITH AND ROBERT TURNER, trustees,
vs.
THE INDIANAPOLIS, BLOOMINGTON & WESTERN Railway Company et al. } Cross-bill.

The undersigned, master in chancery of said court, hereby gives public notice that, in pursuance of an original decree entered in the above-

entitled cause on the third day of September, A. D. 1877, and a modified decree entered on the 11th day of May, A. D. 1878, he will, on Thursday, the sixth day of February, A. D. 1879, at ten o'clock in the forenoon of said day, sell at public auction to the highest and best bidder, in accordance with the provisions of said decrees, at the door of the court-room of said United States circuit court at Springfield, Illinois, all and singular the mortgaged property described and embraced in said decrees, viz:

The line of railroad commonly known as the western extension of said Indianapolis, Bloomington and Western Railway, beginning at Champaign, in the county of Champaign, Illinois, and running thence westwardly through Havana, Mason County, Illinois, to the Mississippi River, together with a branch from White Heath, by way of Monticello, to Decatur, Macon County, Illinois, being about one hundred and thirty-one miles of completed railroad, and about five miles of partially constructed line, together with all its franchises, property, lands, tenements, fixtures, buildings, machinery, goods, and chattels of every description, between said terminal points, and used in operating said described line of railroad, and including all the equipment and rolling stock of said railroad company as specifically described in and by said decrees of foreclosure, and consisting of six (6) locomotives, four (4) passenger coaches, three (3) baggage, mail, and express cars, twenty-nine (29) box cars, two (2) caboose cars, two (2) pilot caboose cars, nine (9) hand cars, nine (9) rubble cars, one (1) boarding car, twenty-two (22) coal cars, fourteen (14) stock cars, twelve (12) flat cars, together with all the supplies or material acquired by the receiver for the operation of said portion of railroad.

TERMS OF SALE.—All such property will be offered together and sold as an entirety and without any right of redemption, but subject, as declared by such decree, to judgments and claims for rights of way, and to all legal liens for taxes due and unpaid, which are a lien prior to the mortgage foreclosed, and also such portions of receiver's certificates as are outstanding, and a lien on such portion of such railroad, and also the title acquired by the purchasers will be subject to such portion of labor and supply claims, if any, as may be finally adjudged to be a lien upon such extension railroad prior to such first mortgage, all of which taxes, judgments, and claims will be assumed by the purchaser in addition to his bid, in the manner required by the original and amended decree.

Before crying any bid, a deposit of twelve thousand five hundred dollars ($12,500) cash will be required to be made with the master, which will be forfeited absolutely if the bidder to whom the property is struck off shall fail to complete the purchase in accordance with the decree and orders of the court.

The further payment of twelve thousand five hundred dollars ($12,500) will be required to be paid in cash at the time the property is struck off to the highest bidder.

The balance of the purchase-money will be required to be paid after confirmation of the sale, in cash, or in Indianapolis, Bloomington and Western Railway first mortgage extension bonds and coupons, in such proportions as the court, under its said decrees, shall hereinafter apportion.

On confirmation and full payment of his bid, the purchaser will be entitled to a deed of the property and to be let into possession thereof.

J. A. JONES,
Master in Chancery.

evfri4t

745 And the undersigned, the said master, did, thereupon, then and there offer and expose for sale, as aforesaid, all of the said property in said notice and decree described and ordered to be sold, and every part and parcel thereof as an entirety as commanded by said decree; and thereupon, Sumner R. Stone, Frederick D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee, in trust for the holders of five million one hundred and twenty-one thousand dollars, face value, of "Extension" first mortgage bonds of the Indianapolis, Bloomington & Western Railway Company, under the trusts expressed in acertain agreement, dated July tenth, eighteen hundred and seventy-seven, a copy of which said agreement is hereto attached and made part of this report, did bid for the same the sum of one hundred and sixty-five thousand dollars, and no one bidding more, and that being the highest and best bid for the same, said property was thereupon, at the hour of ten o'clock and thirty five minutes in the forenoon, then and there, by said master, openly struck off and sold to them for the price aforesaid; and the said purchaser, did then and there, and before any bid was received, deposit with the undersigned twelve thou-
746 sand five hundred dollars as security for their said bid, as required by said decree; and did also, then and there, and immediately after said property was struck off and sold to them, pay to the undersigned in cash the additional sum of twelve thousand five hundred dollars of the purchase-money.

The said master submits his report of his action and doings herein for the consideration and further order of the court

February sixth, A. D. eighteen hundred and seventy-nine.

J. A. JONES, *M. C.*,
U. S. C. C. S. D. Ill's.

(Endorsed:) Filed February 6th, A. D. 1879. J. A. Jones, cl'k.

747 *Exceptions of Thomas to ex. sale.*

Circuit court of the United States, southern district of Illinois.

MALCOMB C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } In equity. Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTEES,
vs.
SAME. } Cross-bill.

CHARLES W. SMITH & ROBERT TURNER
vs.
SAME.

Exceptions of Joseph T. Thomas, trustee, to the master's report of sale made and filed Feb. 6th, 1879.

Now comes Joseph T. Thomas, a citizen of the State of Pennsylvania, one of the defendants in the above-entitled cause, and excepts to
748 the master's report of the sale of said The Indianapolis, Bloomington and Western Railway Company's property and franchises, and shows the following causes for said exceptions:

1st. The court had no jurisdiction in the case, because that the principal litigants therein, viz, Malcomb C. Turner, and all the other complainants in the original bill, and the principal defendants in the cross-bill, were citizens of the city and State of New York, and The Farmers' Loan and Trust Company, the complainant in the cross-bill, was and is also a citizen of said city and State of New York, and that upon such facts existing, there is no law of the United States authorizing the circuit court to take jurisdiction.

That the original proceedings under which said sale was had under a decree of the circuit court of the United States was brought in one of the State courts of Indiana, said Indianapolis, Bloomington and Western Railroad extending into both of said States, for the purpose of establishing certain prior liens against said railroad company; that such proceedings were had thereon; that a receiver was appointed by said State courts; several terms of court after issues were made up in said cause or causes, and ready for hearing in said State court or courts, said cause or causes were removed to the United States district court, for the southern district of Illinois, and the district of Indiana, under the removal act of Congress of 1875. That under said re-
749 moval act, said Federal court or courts did not and could not acquire jurisdiction of said causes for the reason that the petition for removal of said cause or causes was not filed in said State court or courts before or at the time at which said causes could be first tried, but long after the same were ready for hearing, and could have been tried and had been set for hearing from term to term, as will more fully appear from the records of said cause, now in this court remaining, to which reference is here made.

2d. The issues raised by the pleadings in the original bill were not determined by the court, particularly those affecting the mortgage made to the said Thomas, as trustee, commonly called the chattel mortgage—and no effort was made by publication or subpœna, or otherwise, to bring the trustee of said chattel mortgage within the jurisdiction of this court.

3d. This court had no authority or jurisdiction to amend its decree, made September, 1877, after the then term of the court had expired, except upon a supplemental bill filed praying for specific relief, or upon a bill of review; that said term of this court held on September, 1877, expired long before the 4th day of May, 1878, which last-named time was of the January term, 1878, at which time the decree of this court was attempted to be amended in essential particulars set forth upon the records of this court, to which reference is here made.

750 4th. That the bid or price, viz, $165,000, at which the mortgaged premises was struck off and sold by the masters, is an inadequate and insufficient price, and far below the real value of the premises attempted to be sold; that the real value of the property is much greater than $1,000,000.

751 5th. That the masters were unable to inform those desiring to bid what amount of claim or debt the premises were sold subject to the payment of, by reason of which those desiring to bid for the purchase of said premises could not form any intelligent judgment as to what sum to bid, or if they did bid and were accepted what sum of money they assumed by the purchase.

752 That the premises would have sold for more than $165,000 if proposed purchasers could have known what sum of money, or within $100,000 of what sum of money or obligations they would have to assume or to pay.

6th. That the masters were unable to inform those desiring to bid what and how much equipment, supplies, and other personal property was offered for sale, or would be embraced in any sale made at that time—for that certain questions were then pending undetermined by this court, which it decided in one way would find all, or nearly all of the equipment, supplies, and other personal property to be subject to and embraced in the chattel mortgage of which the exceptor is the grantee. That undetermined claims or liens upon said equipments, supplies, &c., were pending before this court to such a vast amount, in all amounting to more than $1,000,000; that a *a* proposed purchaser could form no intelligent judgment as to what sum to bid for said premises, or what the same would cost him if his bid were accepted, or what property he acquired or would acquire by an accepted bid at said masters' sale.

That the premises would have sold for more than $1,000,000 if those desiring to bid could have known the approximate amount of said liens and debts, and approximately what equipment, supplies, and other personal property he would get by an accepted bid.

753 11th. The purchaser at said sale was a certain committee acting as agent of the bondholders of said railway company, although no provision contained in the decree under which said sale was had authorized the parties to said decree to bid at a sale thereunder, and the said masters' report does not show who are the principals for whose use the said property was purchased, and does not disclose what interest each of the parties beneficially interested in said purchase has, nor what amount of the purchase-money was furnished by each one of the said parties; so that the court is dealing with agents merely of undisclosed principals.

754 In support of said exception the said Thomas asks leave to refer to the records of this court, and to the receiver's reports and accounts in this case, and to be allowed to produce witnesses and affidavits to sustain the same.

Feb'y 27th, 1879.

JOSEPH T. THOMAS, *Trustee.*

GEO. W. KRETZINGER, *Solicitor.*
N. A. COWDREY, *Counsel.*

(Endorsed:) Filed March 3rd, 1879. J. A. Jones, clerk.

755 *Exceptions of I., B. & W. R'y to ex. sale.*

Circuit court of the United States, southern district of Illinois.

MALCOMB C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al. } In equity. Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTEES,
vs.
SAME. } Cross-bill.

CHARLES W. SMITH AND ROBERT TURNER
vs.
SAME.

Exceptions of the Indianapolis, Bloomington and Western Railway Company to the master's report of sale made February 6th, 1879, filed Feb. 6th, 1879, of sale of extension R. R.

Now comes the Indianapolis, Bloomington and Western Railway Company, one of the defendants in the above-entitled cause, and
756 excepts to the master's report of the sale of said The Indianapolis, Bloomington and Western Railway Company's property and franchises, and shows the following causes for said exceptions:

1st. The court had no jurisdiction in the case, because that the principal litigants therein, viz, Malcomb C. Turner, and all the other complainants in the original bill, and the principal defendants in the cross-bill, were citizens of the city and State of New York, and The Farmers' Loan and Trust Company, the complainant in the cross-bill, was and is also a citizen of said city and State of New York, and that upon such facts existing, there is no law of the United States authorizing the circuit court to take jurisdiction.

That the original proceedings under which said sale was had under a decree of the circuit court of the United States was brought in one of the State courts of Indiana, said Indianapolis, Bloomington and Western Railroad extending into both of said States, for the purpose of establishing certain prior liens against said railroad company; that such proceedings were had thereon that a receiver was appointed by said State courts; several terms of court after issues were made up in said cause or causes, and ready for hearing in said State court or courts, said cause or causes were removed to the United States district court for the southern district of Illinois and the district of Indiana, under the removal act of Congress of 1875; that under said removal
757 act said Federal court or courts did not and could not acquire jurisdiction of said causes for the reason that the petition for removal of said cause or causes was not filed in said State court or courts before or at the time at which said causes could be first tried, but long after the same were ready for hearing, and could have been tried, and had been set for hearing from term to term, as will more fully appear from the records of said cause now in this court remaining, to which reference is here made.

2d. The issues raised by the pleadings in the original bill were not determined by the court, particularly those affecting the mortgage made to Joseph T. Thomas, as trustee, commonly called the chattel mortgage, and no effort was made by publication or subpœna, or otherwise, to bring the trustee of said chattel mortgage within the jurisdiction of this court.

3d. This court had no authority or jurisdiction to amend its decree, made September, 1877, after the then term of the court had expired, except upon a supplemental bill filed praying for specific relief, or upon a bill of review; that said term of this court held on September, 1877, expired long before the 11th day of May, 1878, which last named time was of the January term, 1878, at which time the decree of this court was attempted to be amended in essential particulars set forth upon the records of this court, to which reference is here made.

758 4th. That the bid or price, viz, $165,000.00, at which the mortgaged premises was struck off and sold by the masters, is an inadequate and insufficient price, and far below the real value of the premises attempted to be sold; that the real value of the property is much greater than $1,000,000.

759 5th. That the masters were unable to inform those desiring to bid what amount of claim or debt the premises were sold subject to the payment of, by reason of which those desiring to bid for the purchase of said premises could not form any intelligent judgment as to

what sum to bid, or if they did bid and were accepted what sum of money they assumed by the purchase.

760 That the premises would have sold for more than $1,000,000 [165,000] if proposed purchasers could have known what sum of money, or within $100,000 of what sum of money or obligations they would have to assume or to pay.

6th. That the masters were unable to inform those desiring to bid what and how much equipment, supplies, and other personal property was offered for sale or would be embraced in any sale made at any time, for that certain questions were then pending undetermined by this court, which it decided in one way would find all, or nearly all, of the equipment, supplies, and other personal property to be subject to and embraced in the chattel mortgage of which the exceptor is the grantee; that undetermined claims or liens upon said equipments, supplies, &c., were pending before this court to such a vast amount, in all amounting to more than $1,000,000; that a *a* proposed purchaser could form no intelligent judgment as to what sum to bid for said premises, or what the same would cost him if his bid were accepted, or what property he acquired or would acquire by an accepted bid at said masters' sale.

That the premises would have sold for more than $1,000,000 if those desiring to bid could have known the approximate amount of said liens and debts, and approximately what equipment, supplies, and other personal property he would get by an accepted bid.

7th. The said railway company pledges itself to this court that
761 if the court will again offer said premises for sale, that the same shall sell for more than $1,000,000, and the cost of making the sale.

8th. In support of said exception the said railway company asks leave to refer to the records of this court and to the receiver's reports and accounts in this case, and to be allowed to produce witnesses and affidavits to sustain the same.

Feb. 27, 1879.

THE INDIANAPOLIS, BLOOMINGTON & WESTERN RAILWAY CO.,
By N. A. COWDREY,
Attorney.

GEO. W. KRETZINGER,
Solicitor.

11th. The purchaser at said sale was a certain committee acting as agent of the bondholders of said railway company, although no provision contained in the decree under which said sale was had authorized the parties to said decree to bid at a sale thereunder, and the said masters' report does not show who are the principals for whose use the said property was purchased, and does not disclose what interest each of the parties beneficially interested in said purchase has, nor what amount of the purchase-money was furnished by each one of said parties, so that the court is dealing with agents merely of undisclosed principals.

(Endorsed:) Filed March 3rd, 1879. J. A. Jones, clerk.

762 *Turner to ex. sale.*

Circuit court of the United States, southern district of Illinois.

MALCOMB C. TURNER ET AL.
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company et al.
} In equity. Original bill.

FARMERS' LOAN AND TRUST COMPANY, TRUSTEES, *vs.* SAME. } Cross-bill.

CHARLES M. SMITH & ROBERT TURNER *vs.* SAME.

Exceptions of James Turner to masters' report, made and filed Feb'y 6th, 1879, of sale of extension railroad.

Now comes James Turner, one of the defendants in the above-
763 entitled cause, and excepts to the masters' report of the sale of said The Indianapolis, Bloomington and Western Railway Company's property and franchises, and shows the following causes for said exceptions:

1st. The court had no jurisdiction in the case, because that the principal litigants therein, viz, Malcomb C. Turner, and all the other complainants in the original bill, and the principal defendants in the cross-bill, were citizens of the city and State of New York, and The Farmers' Loan and Trust Company, the complainant in the cross-bill, was and is also a citizen of said city and State of New York, and that upon such facts existing there is no law of the United States authorizing the circuit court to take jurisdiction.

That the original proceedings under which said sale was had under a decree of the circuit court of the United States, was brought in one of the State courts of Indiana, said Indianapolis, Bloomington and Western Railroad extending into both of said States, for the purpose of establishing certain prior liens against said railroad company; that such proceedings were had thereon that a receiver was appointed by said State courts; several terms of court after issues were made up in said cause or causes, and ready for hearing in said State court or courts, said cause or causes were removed to the United States district court for the southern district of Illinois, and the district of Indiana, under the removal act of Congress of 1875. That under said re-
764 moval act, said Federal court or courts did not and could not acquire jurisdiction of said causes, for the reason that the petition for removal of said cause or causes was not filed in said State court or courts before or at the time at which said causes could be first tried, but long after the same were ready for hearing, and could have been tried and had been set for hearing from term to term, as will more fully appear from the records of said cause now in this court remaining, to which reference is here made.

2d. The issues raised by the pleadings in the original bill were not determined by the court, particularly those affecting the mortgage made to Joseph T. Thomas, as trustee, commonly called the chattel mortgage—and no effort was made by publication or subpœna, or otherwise, to bring the trustee of said chattel mortgage within the jurisdiction of this court.

3d. This court had no authority or jurisdiction to amend its decree made September, 1877, after the then term of the court had expired, except upon a supplemental bill filed praying for specific relief, or upon a bill of review; that said term of this court, held on September, 1877, expired long before the 11th day of May, 1878, which last named time was of the January term, 1878, at which time the decree of this court

was attempted to be amended in essential particulars set forth upon the records of this court, to which reference is here made.

765 4th. That the bid or price, viz, $165,000, at which the mortgaged premises was struck off and sold by the masters, is an inadequate and insufficient price, and far below the real value of the premises attempted to be sold; that the real value of the property is much greater than $1,000,000.

766 5th. That the masters were unable to inform those desiring to bid what amount of claim or debt the premises were sold subject to the payment of, by reason of which those desiring to bid for the purchase of said premises could not form any intelligent judgment as to what sum to bid, or if they did bid, and were accepted, what sum of money they assumed by the purchase.

767 That the premises would have sold for more than $165,000 if proposed purchasers could have known what sum of money, or within $100,000 of what sum of money or obligations they would have to assume or to pay.

6th. That the masters were unable to inform those desiring to bid what and how much equipment, supplies, and other personal property was offered for sale, or would be embraced in any sale made at that time—for that certain questions were then pending undetermined by this court, which it decided in one way would find all or nearly all of the equipment, supplies, and other personal property to be subject to and embraced in the chattel mortgage of which the exceptor is the grantee. That undetermined claims or liens upon said equipments, supplies, &c., were pending before this court to such a vast amount, in all amounting to more than $1,000,000; that a *a* proposed purchaser could form no intelligent judgment as to what sum to bid for said premises, or what the same would cost him if his bid were accepted, or what property he acquired or would acquire by an accepted bid at said masters' sale.

That the premises would have sold for more than $1,000,000 if those desiring to bid could have known the approximate amount of said liens and debts, and approximately what equipment, supplies, and other personal property he would get by an accepted bid.

7th. The said James Turner pledges himself to this court that
768 if the court will again offer said premises for sale, that the same shall sell for more than $165,000, and the cost of making the sale.

10th. In support of said exception the said Turner asks leave to refer to the records of this court, and to the receiver's reports and accounts in this case, and be allowed to produce witnesses and affidavits to sustain the same.

769 11th. The purchaser at said sale was a certain committee, acting as agent of the bondholders of said railway company, although no provision contained in the decree under which said sale was had authorized the parties to said decree to bid at a sale thereunder, and the said masters' report does not show who are the principals for whose use the said property was purchased, and does not disclose what interest each of the parties beneficially interested in said purchase has, nor what amount of the purchase-money was furnished by each one of the said parties; so that the court is dealing with agents merely of undiscovered principals.

Feb. 27th, 1879.

JAMES TURNER,
By N. A. COWDREY,
Attorney.

GEO. W. KRETZINGER, *Solicitor.*

(Endorsed:) Filed March 3d, 1879. J. A. Jones, clerk.

770 *Exceptions of Amos Kidder to ex. sale.*

United States circuit court, southern district of Illinois, ss:

MALCOLM C. TURNER AND OTHERS
vs.
THE INDIANAPOLIS, BLOOMINGTON AND Western Railway Company and others. } Original bill.

CHARLES W. SMITH AND ROBERT TURNER, trustees,
vs.
THE INDIANAPOLIS, BLOOMINGTON AND Western Railway Company. } Cross-bill.

The exceptions of Amos M. Kidder, Charles W. McLellan, and Wayland Trask, filed, by the leave of court, to the master's report of the sale of the property mentioned in said cross-bill, as the property covered by the said extension mortgage, which report was filed on the sixth day of February, A. D. 1879.

These exceptors, who are petitioners for the allowance of their claim herein mentioned, by leave of court first had and obtained, represent and show to the court:

That they are the owners of coupons which fell due on certain of said extension bonds on the first day of January, A. D. 1874, to the amount of their face value of thirteen thousand one hundred and twenty-five dollars.

771 That as such owners they are entitled to have said coupons, with the interest thereon, from the first day of January, A. D. 1874, paid out of the proceeds of the sale of said mortgaged premises, in priority to any payment being made to the holders of said extension bonds, or of the said coupons which fell due after said first day of January, A. D. 1874, and pro rata with other holders of coupons which fell due on the day last mentioned.

That the amount of such coupons now outstanding entitled to pro rata distribution and payment, with those held by these exceptors, is not known to these petitioners, but they are informed and believe that it exceeds forty-six thousand dollars.

That the amount of the liens and claims, which by the decree of this court under which said sale was made, were ordered to be paid out of the proceeds of said sale prior to any distribution or payment to any of the holders of said bonds and coupons in said decree mentioned, is not fixed or determined, even approximately, by the decrees of this court.

That the amount of said bid, at which said mortgaged property was struck off by said master, to the purchasing committee of certain
772 of said bond and coupon holders, to wit, the sum of one hundred and sixty-five thousand dollars is wholly and totally inadequate, and that said property at the time of said sale, and now, is worth more than the sum of one million dollars.

Wherefore these petitioners do object to a confirmation of said sale, and do except to said masters' report, because the price bid for said property is grossly inadequate, and they pray that they may have leave to support the allegations above by them made by the records in said causes and by evidence, and that said sale may be disaffirmed, and said

property be again offered for sale, to the end that their claim as aforesaid may be fully paid and satisfied.

AMOS M. KIDDER,
CHARLES W. McLELLAN, JR., &
WAYLAND TRASK,
By CHAS. M. OSBORNE,
Their Solicitor.

CHARLES M. OSBORNE,
Of Counsel.

(Endorsed:) Filed March 7th, 1879. J. A. Jones, clerk.

773 And afterwards, to wit, on Wednesday the 9th day of April, at the January term of said court, A. D. 1879, the following further proceedings were had and entered of record in said cause, to wit:

774 In the circuit court of the United States, southern district of Illinois and district of Indiana.

MALCOM C. TURNER ET AL.
vs.
INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company and others. } Chancery.

And now, on this day, this cause coming on to be heard upon the application of Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, purchasing committee, for an order directing the delivery to them of a deed, pursuant to the provisions of the decrees entered herein, and the court having considered the said application, and the several reports of George B. Wright, receiver, and it appearing to the court that the amount of the receiver's debts arising in the operation of the main line of road of the said Indianapolis, Bloomington and Western Railway Company is assumed to be the sum of four hundred and seven thousand seven hundred and seven and $\frac{64}{100}$ dollars in addition to certain unsettled and unadjudicated claims against the said receivership:

That after deducting the available assets, appearing to be in the hands of the said receiver, the amount of money required to pay off and discharge the portions of said receiver's debts including the
775 said una'justed and unliquidated claims arising in the operation of the said main line of road is the sum of *the* three hundred and sixty-two thousand dollars.

It is thereupon considered by the court and ordered that upon the payment into court in cash and certificates of receiver's debts, of so much more of the said purchase-money in addition to the moneys heretofore paid as shall be necessary to pay and discharge the said sum of three hundred and sixty-two thousand dollars, and upon the payment of the balance of the purchase-money either in cash or in the bonds and coupons provided in the said decrees to be received in payment of the said purchase-money, each such bond and coupon being received for such sum as the holders thereof *is* entitled to receive under the distribution ordered in the said decree and upon the payment in addition to the amount of the said purchase-money into the circuit court for the southern district of Illinois of the amount of the capital stock, taxes assessed against the said main line of railroad in the State of Illinois, which said

amount is to be withdrawn from the court on the application of James K. Edsall, attorney-general of the State of Illinois, unless within
776 ninety days from the entry of this order the purchasers or their assigns, obtain from a judge of a State court an order restraining the collection of the said taxes from the property so to be conveyed, and in that event the said fund shall abide the decision of the case in the State courts and be applied to the payment of the said taxes; in case the injunction or restraining order is ustimately dissolved the said masters be, and they are hereby, directed to make and deliver unto the purchasers thereof a deed of the said mortgaged premises, which said deed shall be substantially in the following form, that is to say:

To all to whom these presents shall come, greeting:

Whereas, in a certain suit in equity, pending in the circuit court of the United States for the southern district of Illinois, and in a certain other suit in equity, pending in the circuit court of the United States for the district of Indiana, wherein Malcom C. Turner and others were complainants, and the Indianapolis, Bloomington and Western Railway Company and others, were defendan*ds*; such proceedings wereh eretofore had, that on the cross-bills of The Farmers' Loan and Trust
777 Company exhibited in the said suits against the said Indianapolis, Bloomington and Western Railway Company and others, it was considered by the said courts respectively, and ordered, adjudged, and decreed that the said defendants, The Indianapolis, Bloomington and Western Railway Company pay to the said complainant in the said cross-bills, The Farmers' Loan and Trust Company, the sum of six million two hundred and thirty-four thousand six hundred and twenty-five dollars, with interest thereon at the rate of six per centum per annum, together with the costs of said suits, and that in default of such payments within the time limited in said decrees, certain of the railroad, property, effects, and franchises, of the said Indianapolis, Bloomington and Western Railway Company, in the said decrees particularly mentioned, described, and set forth to be sold as an entirety; and

Whereas, J. A. Jones, master in chancery of the said circuit court of the United States for the southern district of Illinois, and William P. Fishback, master in chancery of the said circuit court of the United States for the district of Indiana, were duly appointed by the said courts, respectively, to execute the said decrees by making *making* sale of the the said premises; and

778 Whereas, default having been made in the payment of said moneys within the time limited in and by the said decrees, the said J. A. Jones and William P. Fishback, masters in chancery as aforesaid, having first advertised the time, terms, and place of sale, in accordance with the requirements of the said decrees, did, on the thirtee'th day of October, A. D. 1878, at the south door of the court-house, in the city of Bloomington, McLean County, in the State of Illinois, make sale of the said premises by public auction, in conformity to the provisions of the said decrees, unto Austin Corbin, Giles E. Taintor, and Josiah B. Blossom, purchasing committee, in trust for the holders of certain bonds, upon the trusts expressed in a certain agreement dated December 20, 1875, and a supplement thereto dated July 25, 1878 (copies of which are attached to the report of the said sale, filed by the said masters in the said suits), for the sum of one million dollars; the said purchasers being then and there the highest bidders for the said premises, and the said sum being the highest price bidden for the same; and

Whereas, the said Austin Corbin, Giles E. Taintor, and Josiah B.

Blossom, purchasing committee as aforesaid, having before the said sale, pursuant to the requirements of the said decrees, deposited in the hands of the said masters the sum of fifty thousand dollars as se-
779 curity for their bid, in case the property should be struck off to them, and having paid in cash to the said masters, on the day of said sale, in addition to the said deposit of fifty thousand dollars, the further sum of fifty thousand dollars, the said masters did, after the said sale forthwith make report of their proceedings unto the said courts; and

Whereas such proceedings were afterwards had in the said suits, that on the twenty-third day of December, A. D. 1878, it was considered by the said courts respectively and ordered, adjudged, and decreed that the said sale be, and the same was in all things approved, ratified, and confirmed; and *and* whereas, afterwards, to wit, on the 9th day of April, A. D. 1879, the said Austin Corbin, Giles E. Taintor, and Joseph B. Blossom, purchasing committee as aforesaid, did pay into court in cash and certificates of receiver's debt the further sum of $341,452.84 *dollars*, being so much more of the said purchase-money as is necessary to pay and discharge the portion of the receiver's debts arising in the operation of the main line of railroad of the said Indianapolis, Bloomington and Western Railway Company, and did then and there pay into the hands of the masters in cash and in the past-due coupons and bonds mentioned in the said decrees (the said bonds and coupons being
780 received by the said masters for the sum which the holders thereof *is* entitled to receive under the distribution ordered in the said decrees), the further sum of $558,547.16 *dollars* being the balance of the said purchase-money in full.

Now, know ye*a*, that in consideration of the hereinbefore-recited premises and of the requirements of the said decrees, as well as in consideration of the payment of the said sum of one million dollars, so paid as aforesaid, the said J. A. Jones and William P. Fishback, masters in chancery as aforesaid, have granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm unto the said Austin Corbin, Giles E. Taintor, and Josiah B. Blossom, purchasing committee, their successor or successors and assigns—

The main line of railroad of the Indianapolis, Bloomington and Western Railway Company, extending from the city of Indianapolis, in the State of Indiana, to the city of Pekin, in the State of Illinois, including the right of way therefor, the road-bed thereof, and the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, and *and* all tools and implements owned or provided to be used therein, and in construct-
781 ing and repa'ring cars and machinery for said road on the tracks and superstructure aforesaid, and all fixtures and structures of whatever name or nature, and the lands and grounds connected therewith, used or provided to be used in operating said road wherever situated, and all cars, engines, and rolling-stock belonging to the said company (except the portion thereof by the provisions of said decrees ordered to be apportioned to the extension of said railway and specifically described and set forth in the twentieth paragraph of the said decrees respectively); also all the supplies and other things provided by the said company or the receiver thereof to be used in operating the said railroad, together with all franchises of the said company, and of its original constituent companies, that is to say, the Danville, Urbana, Bloomington and Pekin Railroad Company, The Indianapolis, Craw-

fordville and Danville Railroad Company, and the said The Indianapolis, Bloomington and Western Railway Company, including the right and franchises of the said several companies to be and to act as corporations, so far as the same relate to the said main line of railroad.

Together with all and singular the rights, privileges, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the tolls, incomes, rents, issues, and profits thereof and of every part and parcel thereof.

782 To have and to hold, unto *to* them, the said Austin Corbin, Giles E. Taintor, and Josiah B. Blossom, purchasing committee, their successor or successors and assigns forever; subject nevertheless to judgment for right of way and to all legal and valid claims therefor; also subject to all sums legally due for taxes which are in lien prior to the mortgage mentioned and recited in the said cross-bills; also subject to the provisions of certain contracts of lease and purchase heretofore made with Oliver Adams for five hundred box freight-cars by said receiver; also subject to that portion of such other claims and sums of money as are now under consideration by, and as shall be hereafter allowed by the said courts or either of them in the said suits in preference to the liens of the hereinbefore mentioned mortgages or deeds of trust for debts due by said railway company for work and labor done, and supplies and material furnished during a period not exceeding the six months next preceding the first day of December, 1874, in the operation of that portion of the said railroad by the said decree directed to be sold, but nothing herein contained shall be held or taken to prejudice the said Farmers' Loan and Trust Company or the said Austin Corbin, Giles E. Taintor and Josiah B. Blossom, their successor or suc-

783 cessors and assigns or any of them to object to the same or to appeal from any order or orders which may be hereafter made by the said courts or either of them in relation thereto to the Supreme Court of the United States, which said claims, judgments, and taxes and car contracts and such back pay, labor, and supply claims as shall be finally adjudged against said property hereby conveyed are hereby expressly assumed by the said Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, purchasing committee, their successor or successors and assigns as and for a charge and lien upon the property hereby conveyed prior and superior to any interest or estate hereby vested in them or any of them; also subject to the right and power of the said courts or either of them to enforce the payment of the said claims, judgments, taxes, car contracts, back pay, labor, and supply claims as shall be ultimately established or any of them by proper orders in the said suits to be noted at the foot of said decrees or otherwise duly entered in the said courts, and particularly subject to the right and power of the said courts or either of them upon their own motion or of any judge thereof or upon the application of any person in interest to resume possession of the said property or of any part thereof at any time when the said purchasers or their assigns shall fail to pay any of the said

784 moneys on the order of the said courts or either of them, and the said Austin Corbin, Giles E. Tainter, and Josiah B. Blossom, purchasing committee, for themselves and their successor or successors and assigns do hereby covenant and agree that they will surrender the possession of the said premises and of every part thereof, whenever an order shall be made by either of said courts directing or requiring the same to be done pursuant to the purposes hereinbefore stated, and it is expressly understood that this deed is made and that the said prop-

erty shall be taken, possessed, and held subject to the provisions last above written.

In trust, however, for the holders of certain bonds upon the trusts expressed in a certain agreement dated December 20, 1875, and a supplement thereto dated July 25, 1878, copies whereof are attached to the reports of sale filed in the said suits by the said masters.

In testimony whereof the said J. A. Jones and William P. Fishback, masters in chancery, as aforesaid have hereunto set their hands and seals this twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

J. A. JONES, [SEAL.]
M. C. U. S. C. C., South. Dist. Illinois.

785 WILLIAM P. FISHBACK, [SEAL.]
Master in Chancery, U. S. C. C., Dist. of Indiana.

STATE OF ILLINOIS,
County of Sangamon, ss:

I, James A. Winston, clerk circuit court in and for said county, in the State aforesaid, do hereby certify that J. A. Jones, personally known to me to be the same person whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this day of .

[SEAL.] JAMES A. WINSTON,
Circuit Clerk.

STATE OF INDIANA,
County of Marion, ss:

I, George C. Hitt, a notary public in and for said county, in the State aforesaid, do hereby certify that William P. Fishback, personally known to me to be the same person whose name is subscribed to the within instrument, appeared before me this day in person and
786–788 acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this eighth day of April, 1879.

[SEAL.] GEORGE C. HITT,
Notary Public.

And that upon the delivery of said deed the said George B. Wright, receiver, be and he is hereby required to surrender and deliver up to the said purchasers the said railroad and property and every part thereof, pursuant to the requirements of the said decree.

It is further ordered that the said moneys shall remain in the registry of the court or in the hands of the said masters until the further order of the court.

It is further ordered that the right and power of the said courts or either of them is hereby reserved to enforce the payment of the said judgment for right of way and all legal and valid claims, therefore all sums legally due for taxes, which are a lien prior to the said mortgages, the said car contracts, and that portion of such other claims as are now under consideration by and as shall hereafter be allowed by the said

courts or either of them for debts due by said railway company for
789 work and labor done and supplies and material furnished during a period not exceeding the six months next preceeding the 1st day of December, 1874, as shall be ultimately established or any of them, by proper orders in the said suits to be noted at the foot of the said decrees or otherwise duly entered in the said courts, and particularly the right and power of the said courts or either of them on their own motion or of any judge thereof or on the application of any person in interest to resume possession of the said property or of any part thereof at any time when the said purchasers or their assigns shall fail to pay any of the said moneys on the order of the courts or either of them, and the said purchasers shall take the said deeds and shall take, hold, and possess the said property and every part thereof subject to the provisions hereof.

And it is further ordered that no distribution be made of the said moneys claimed by the said Rogers Locomotive and Machine Works upon a certain judgment against the said receiver pending the writ of error sued out by the said receiver to the Supreme Court of the United States, except on the order of the court hereafter to be made on due notice to the parties in interest.

790 DISTRICT OF INDIANA:

I, William P. Fishback, clerk of the circuit court of the United States, for the district of Indiana, do hereby certify that the above and foregoing is a full and true copy of an order made and entered in the cause of Malcom C. Turner, et al. vs. I., B. & W. R'y Co. et al., No. 4427, in said court, on the 5th day of April, A. D. 1879, and also a full and true copy of the deed of said mortgaged premises embodied in said order.

Witness my hand and the seal of said court this 11th day of April, A. D. 1879.

[SEAL.] W. P. FISHBACK, *Clerk.*

DISTRICT OF INDIANA:

I, Walter Q. Gresham, judge of the district court of the United States for said district, do certify that at the date of the foregoing certificate, W. P. Fishback was, and now is, the clerk of the circuit court of the United States for said district, and that his attestation aforesaid is in due form of law.

Witness my hand this 11th day of April, 1879.

W. Q. GRESHAM, *Clerk.*

(Indorsed.) Filed April 9th, A. D. 1879. J. A. Jones, cl'k.

791 And afterwards, to wit, on Friday, the 9th day of May, at the January term of said court, A. D. 1879, the following further preceedings were had and entered of record, to wit:

792 In the circuit court of the United States, for the southern district of Illinois.

MALCOLM C. TURNER ET AL. *vs.* THE INDIANAPOLIS, BLOOMINGTON AND WESTERN Railway Company and others.	Chancery. Original bill.

ROBERT TURNER AND CHARLES W. SMITH, trustees,
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY and others. } Cross-bill.

And now, on this day, the cause coming on to be heard upon the application of Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee in trust for the holders of certain extension mortgage bonds of the Indianapolis, Bloomington and Western Railway Company, upon the trusts of a certain agreement—a copy of which is attached to and filed with the masters' report of sale hereinafter mentioned—for an order directing the delivery to them of a deed pursuant to the provisions of the decrees entered herein, and the order of this court confirming the sale made by the master on February sixth, A. D. 1879.

793 And the court having considered the said application, and it appearing that said purchasing committee is ready to pay into court the entire amount bid at said sale, to wit, one hundred and forty thousand dollars, in addition to the twenty-five thousand dollars paid into court at the time of said sale—in cash or in receiver's certificates; and it appearing from the several reports of the receiver' and from an agreement and stipulation made and entered into by and between said extension purchasing committee, and the purchasing committee of the main line of said Indianapolis, Bloomington and Western Railway Company, adjusting and dividing the receiver's indebtedness between said extension and said main line, that said sum is for more than sufficient to liquidate and pay all of the receiver's indebtedness incurred in operating, repairing, and improving said extension railway:

It is thereupon considered by the court, and ordered, that upon the payment into court in cash and certificates of receiver's debts of one hundred and forty thousand dollars more of the purchase-money in addition to the twenty-five thousand dollars heretofore paid, the same being the entire purchase-money bid at said sale, the said mas-

794 ter, J. A. Jones, be, and he is hereby, directed to make and deliver unto the purchasers of said extension railway and property a deed of the said mortgaged premises, which said deed shall be substantially in the following form, that is to say:

To all to whom these presents shall come, greeting:

Whereas in a certain suit in equity, pending in the circuit court of the United States for the southern district of Illinois, wherein Malcolm C. Turner and others were complainants, and the Indianapolis, Bloomington and Western Railway Company and others were defendants, such proceedings were heretofore had that on the cross-bill of Robert Turner and Charles W. Smith, trustees, exhibited in the said suit against the said Indianapolis, Bloomington and Western Railway Company and others, it was considered by the said court and ordered, adjudged, and decreed that the said defendant, The Indianapolis, Bloomington and Western Railway Company, pay to the said complainants in the said cross-bill, Robert Turner and Charles W. Smith, trustees, the sum of six million nine hundred and eleven thousand six hundred and sixty-six dollars and sixty-six cents, payable in the gold coin of the

795 United States, together with the costs of suit, and that in default of such payment within the time limited in the said decree, certain of the railroad property, effects, and franchises of the said Indian-

apolis, Bloomington and Western Railway Company, in the said decree particularly mentioned and set forth, and hereinafter described, be sold as entirety; and

Whereas J. A Jones, master in chancery of the said circuit court of the United States, for the southern district of Illinois, was duly appointed by the said court to execute the said decree, by making sale of the said premises; and

Whereas default having been made in the payment of said moneys within the time limited in and by the said decree, the said J. A. Jones, master in chancery as aforesaid, having first advertised the time, terms, and place of sale, in accordance with the requirements of the said decrees, did, on the sixth day of February, A. D. 1879, at the door of the court-room of the United States circuit court, in the city of Springfield, Sangamon County, in the State of Illinois, make sale of the said premises by public auction, in conformity to the provisions of the said decree, unto Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee in trust
796 for the holders of certain extension bonds, upon the trusts expressed in a certain agreement made and entered into by and between said purchasing committee and certain holders of extension bonds of the Indianapolis, Bloomington and Western Railway Company (a copy of which is attached to the report of the said sale filed by the said master in the said suit), for the sum of one hundred and sixty-five thousand dollars, the said purchasers being then and there the highest bidders for the said premises, and the said sum being the highest price bidden for the same; and

Whereas the said Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee as aforesaid, having before the said sale, pursuant to the requirements of the said decree, deposited in the hands of the said master the sum of twelve thousand and five hundred dollars, as security for their bid in case the property should be struck off to them, and having paid in cash to the said master, on the day of said sale, in addition to the said deposit of twelve thousand and five hundred dollars, the further sum of twelve thousand five hundred dollars, the said master did after the said
797 sale forthwith make report of his said proceedings unto the said court; and

Whereas such proceedings were afterwards had in the said suits, that on the thirty-first day of March, A. D. 1879, it was considered by the said court and ordered, adjudged, and decreed that the said sale be, and the same was in all things, approved, ratified, and confirmed; and

Whereas, afterwards, to wit, on the ninth day of May, A. D. 1879, the said Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee as aforesaid, did pay into court, in cash and certificates of receiver's debts, the further sum of one hundred and forty thousand dollars, being the balance of the said purchase-money in full:

Now, know ye, that in consideration of the hereinbefore recited premises, and of the requirements of the requirements of the said decree, as well as in consideration of the payment of the said sum of one hundred and sixty-five thousand dollars so paid as aforesaid, the said J. A. Jones, master in chancery as aforesaid, has granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release, convey, and confirm unto the said Sumner R. Stone, F. D.
798 Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee, their successor or successors and assigns,

the western extension railway and property of the Indianapolis Bloomington and Western Railway Company, commencing at the eastern terminus thereof at the city of Champaign, in the county, of Champaign; thence running to the town of *of* White Heath, in the county of Piatt; thence by way of Clinton, in the county of De Witt; Lincoln, in the county of Logan; Mason City and Havana, in the county of Mason, westwardly to the Mississippi River; together with a branch extending from said town of White Heath, by way of Monticello, in the county of Piatt, to the city of Decatur, in the county of Macon, all in the State of Illinois, being in all about two hundred and fifteen miles in length, of which about one hundred and thirty-one miles in length is now constructed and in operation, including the right of way therefor, the road-bed thereof, and the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds and buildings and tenements connected therewith, and all tools, machinery, and implements owned or provided to be used thereon, and in constructing and repairing cars and
799 machinery for said railway, or the track and superstructures aforesaid, and all fixtures and structures of whatever name and nature, and the lands and grounds connected therewith, used or provided to be used in operating said railway wherever situated, and all cars, engines, equipment, and rolling stock belonging to the said company, and numbered and described as follows, to wit:

(6) six locomotives, Nos. 11, 31, 32, 33, 40, 41.

(4) four passenger coaches, Nos. 9, 11, 15, 21.

(3) three baggage, mail, and express cars, Nos. 3, 4, 8.

(29) twenty-nine box cars, Nos. 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 734, 736, 738, 740, 744, 746, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770.

(2) two caboose cars, Nos. 11, 12.

(2) two pilot caboose cars, Nos. 24, 25.

(9) nine hand-cars, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9. "Ex."

(9) nine rubble cars, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9. "Ex."

(1) one boarding car, No. 6.

(22) twenty-two coal cars, Nos. 301, 305, 307, 309, 311, 313, 315, 319, 321, 323, 325, 327, 329, 331, 333, 335, 339, 341, 343, 345, 347, 349.

(14) fourteen stock cars, Nos. 402, 404, 406, 408, 410, 414, 418, 420, 422, 424, 430, 432, 434.

800 (12) twelve flat cars, Nos. 83, 91, 97, 99, 101, 103, 963, 847, 383, 385, 387, 389.

Together with all the supplies or material acquired by the said company, or the receiver, for the operation of said railway, known as the Extension, together with all franchises of the said company as appertaining to said extension railway, and of its original constitutent companies, that is to say, The Havana, Mason City, Lincoln and Eastern Railway Company and the Monticello Railroad Company, both corporations of the State of Illinois, and the said The Indianapolis, Bloomington and Western Railway Company, including the right and franchises of the said several companies to be and to act as corporations so far as the same relate to the said western extension of the Indianapolis, Bloomington and Western Railway.

Together with all and singular the rights, privileges, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the tolls, incomes, rents, issues, and profits thereof, and of every part and parcel thereof.

To have and to hold unto them, the said Sumner R. Stone, F. D. Tap-

pen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee, as aforesaid, their successor, or successors, and assigns forever.

801 Subject, nevertheless, to judgments for right of way on said extension railway, and to all legal and valid claims therefor; also subject to all sums legally due for taxes, which are a lien on said extension railway prior to the mortgage mentioned and recited in the said cross-bill; also subject to that portion of such other claims and sums of money as are now under consideration by, and as shall be hereafter allowed by the said court in the said suit in preference to the lien of the hereinafter mentioned mortgage or deed of trust for debts due by said railway company for work and labor done, and supplies and material furnished during a period not exceeding the six months next preceding the first day of December, 1874, in the operation of that portion of the said railway by the said decree directed to be sold, but nothing herein contained shall be held or taken to prejudice the said Robert Turner and Charles W. Smith, trustees, or the said Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee, as aforesaid, their successor or successors and assigns, to object to the same, or to appeal from any order or orders which may be hereafter made by the said court in relation thereto, to the Supreme Court of the United States; which said claims, judg-

802 ments, and taxes, and such back pay, labor, and supply claims as shall be finally adjudged against said property hereby conveyed are hereby expressly assumed by the said Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee, as aforesaid, their successor or successors and assigns as and for a charge and lien upon the property hereby conveyed prior and superior to any interest or estate hereby vested in them or any of them; also subject to the right and power of the said court to enforce the payment of such of the said claims, judgments, taxes, back pay, labor, and supply claims, as shall be ultimately established, or any of them, by proper orders in the said suit to be noted at the foot of said decree, or otherwise duly entered in the said court, and particularly subject to the right and power of the said court, upon its own motion, or of any judge thereof, or upon the application of any person in interest, to resume possession of the said property, or of any part thereof at any time when the said purchasers or their assigns shall fail to pay any of the said moneys on the order of the said court, and the said Sumner R. Stone, F. D. Tappen, John Welsh, jr., H. K. Thurber, and Philo C. Calhoun, purchasing committee as aforesaid, for themselves and their suc-

803 cessor or successors and assigns do hereby covenant and agree that they will surrender the possession of the said premises and of every part thereof, whenever an order shall be made by said court, directing or requiring the same to be done, pursuant to the purposes hereinbefore stated; and it is expressly understood that this deed is made, and that the said property shall be taken, possessed, and held subject to the provisions last above written.

In trust, however, for the holders of certain extension mortgage bonds, upon the truss expressed in a certain agreement, made and entered into by and between said purchasing committee, and certain holders of extension mortgage bonds of the Indianapolis, Bloomington and Western Railway Company, a copy whereof is attached to the report of sale filed in the said suits by the said master.

In testimony whereof, the said J. A. Jones, master in chancery as

aforesaid, has hereunto set his hand and seal this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

J. A. JONES, [SEAL.]

M. C., U. S. C. C., South. Dist. Illinois.

804 STATE OF ILLINOIS,
County of Sangamon, ss:

I, James A. Winston, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that J. A. Jones, personally known to me to be the same person whose name is subscribed to the within instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set apart.

Given under my hand and official seal, the ninth day of May, A. D. 1879.

[L. S.] JAMES WINSTON,
Circuit Clerk.

And that upon the delivery of said deed, the said William H. Smith, receiver of said extension railway, be, and he is hereby required to surrender and deliver up to the said purchasers the said railway and property and every part thereof, pursuant to the requirements of the said decree.

It is further ordered that the said moneys shall remain in the registry of the court or in the hands of the said master until the further order of the court.

It is further ordered by the court that upon the payment into
805 court by said purchasing committee as aforesaid of the said sum of one hundred and forty thousand dollars as aforesaid, in addition to the twenty-five thousand dollars heretofore paid, the county treasurers, assessors, and tax collectors, and the deputies and officials of each and every of them, of, and for the several counties of Champaign, Piatt, De Witt, Logan, Mason, and Macon, in the State of Illinois, and each, all, and every of them, be, and they are hereby enjoined and restrained from making any attempt by levy, seizure, or otherwise to enforce the collection and payment of any of the capital stock taxes assessed against said extension railway, as a part of the Indianapolis, Bloomington and Western Railway, for and during ninety days from and after the date of the entering of this order, and the execution, and delivery of the deed hereby ordered and decreed to be made and delivered.

It is further ordered, that the right and power of the said court is hereby reserved to enforce the payment of the said judgments for right of way and all legal and valid claims therefor, all sums legally due for taxes which are a lien prior to the said mortgage, and that portion of such other claims as are now under consideration by, and as shall be hereafter allowed by the said court for debts due by said railway company, for work and labor done, and supplies and
806 materials furnished during a period not exceeding the six months next proceeding the 1st day of December, 1874, as shall be ultimately established, or any of them by proper orders in the said suit, to be noted at the foot of the said decree, or otherwise duly entered in the said court, and particularly the right and power of the said court on its own motion, or any judge thereof or on the application

of any person in interest to resume possession of the said property or of any part thereof at any time when said purchasers or their assigns shall fail to pay any of the said moneys on the order of the court, and the said purchasers shall take the said deed and shall take, hold, and possess the said property and every part thereof subject to the provisions hereof.

807 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that in a certain cause wherein Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, as Turner Brothers, are complainants, and the Indianapolis, Bloomington and Western Railway, the Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner, and Joseph T. Thomas are defendants in the original bill; and the Farmers' Loan and Trust Company is complainant, and the Indianapolis, Bloomington and Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner, Joseph T. Thomas, Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner,
808 Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, as Turner Brothers, are defendants in a certain cross-bill; and Charles W. Smith and Robert Turner are complainants, and the Indianapolis, Bloomington and Western Railway Company, Farmers' Loan and Trust Company, Benjamin E. Smith, Joseph T. Thomas, Malcolm C. Turner, James Turner, Thomas E. Turner, Archibald Turner, George M. Turner, and Joseph S. Decker are defendants in a certain other cross-bill; and Joseph T. Thomas and Benjamin E. Smith are complainants, and the Indianapolis, Bloomington and Western Railway Company, Farmers' Loan and Trust Company, Charles W. Smith, Malcolm C. Turner, James Turner. Thomas C. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker are defendants in a certain other cross-bill, the foregoing 806 pages contain a true and correct copy of the following named papers and orders of court filed & entered of record in said entitled cause, to wit: Original bill, & Exhibits A, B, C, D, E, F, &
809 G thereto; answer & cross-bill of Farmers' Loan & Trust Co; 1st, 2nd, & 3rd amendments to cross-bill; answer & cross-bill of Denny et al.; answer of B. E. Smith, & ans. of Dennison to cross-bill of Denny et al.; ans. of Farmers' Loan & Trust Co. to cross-bill of Denny et al.; answer & cross-bill of C. W. Smith; suggestion of bankruptcy & bankruptcy proceedings of Turner Brothers; answers of Danville Banking & Trust Co. to original & cross-bills of Farmers' Loan and Trust Co.; subpœnas on cross-bill of Farmers' Loan & Trust Co, & on cross-bill of Denny et al.; order taking jurisdiction of cause; answer of Farmers' Loan & Trust Co. to cross-bill of Smith; answer of Thomas et al. to cross-bill of Farmers' Loan & Trust Co.; answer of Turner & Smith to cross-bill of Farmers' Loan & Trust Co.; depositions of Ralston, Blossom, Corbin, Taintor, Spaulding, Babcock, Choate, Griggs, & Newring; decree of foreclosure of main line; decree of foreclosure of extension line; amendment to extension decree; petition of James Turner for leave to intervene; master's report of sale of main line; exceptions of Smith & Turner thereto; decree approving sale of main line: petition of Thomas; petition for appeal; order allowing appeal; bond on appeal; report of the sale of extension line, & exceptions

of I., B. & W. R'y Co., Thomas, Turner, & Kidder thereto, and
810 orders for master to make deeds, as fully as same appear of file & of record in my said office.

I do further certify that the motions to transfer case to U. S. court and to dismiss for want of jurisdiction are not contained in transcript from De Witt County, Illinois, circuit court, filed in my said office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Springfield, in said district, this 15th day of October, A. D. eighteen hundred and seventy-nine, and of our Independence the one hundred & fourth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 120. James Turner & The Indianapolis, Bloomington & Western Railway Company, appellants, vs. The Farmers' Loan and Trust Company et al. S. Illinois, C. C. U. S. Filed 22nd October, 1879.

16 552

OFFICE SUPREME COURT, U.S.
FILED
DEC 5 1882
JAMES H. MCKENNEY, CLERK

Supplemental Transcript of Record.

SUPREME COURT OF THE UNITED STATES.

No. 120. October Term, 1882.

JAMES TURNER and the I., B. & WESTERN RAILWAY COMPANY,

Appellants,

vs.

THE FARMERS' LOAN & TRUST CO. et al.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS AND THE DISTRICT OF INDIANA.

Burgoyne, Law Case Printer (Law Telephone 587), 57, 59 & 61 Park Street, N. Y.

INDEX.

	PAGE.
Petition of James Turner	270
Summons in Cross Bill	281
Sheriff's return	281
Petition of Farmers' Loan, &c., Co. to remove cause from State Court	282
H. Crawford's withdrawal as Solicitor of Turner Bros., original plaintiffs	286
Motion to dismiss original bill by Farmers' Loan, &c., Co.	287
Amended decree	288
Exceptions of [redacted] C. R. R. & B. Co.	291

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF ILLINOIS AND THE DISTRICT OE INDIANA.

MALCOMB C. TURNER ET AL. vs. THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY, ET AL.	In Equity. Original Bill.
FARMERS' LOAN AND TRUST COMPANY Trustees vs. SAME.	Cross Bill.

PETITION OF JAMES TURNER, FILED DEC. 21 1878.

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS AND DISTRICT OF INDIANA.

Your orator, James Turner, a citizen of the City and State of New York, by leave of the Court, first had and obtained, respectfully petitions and shows to the Court:

FIRST. That he was one of the complainants in the original bill of complaint filed in this suit, and one of the firm of Turner Brothers.

SECOND. Upon information and belief, your petitioner avers that said Turner Brothers filed their bill of complaint against the Indianapolis, Bloomington and Western Railroad Company, The Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner and Joseph T. Thomas, the defendants in this case, in the Circuit Court of the State of Illinois for the County of Dewitt, on or about the 18th day of November, 1874, and also on the same day in the Circuit Court of the State of Indiana for Montgomery County, alleging an indebtedness from the Raiway Company to the complainants of a large sum of money; viz.: $865,000, and interest thereon, and alleging a lien as security for the payment thereof, prior to the claims of said Dennison, Smith and Thomas and praying for an accounting as to the debts, liens and priorities of creditors, and for a a foreclosure of all the mortgages on the property represented by the parties defendant, and for the sale of the property, and the appointment of a Receiver. Your petitioner refers to copies of said complaint, now on file in this Court, for a more full description of the contents thereof.

THIRD. That on the 30th day of January, 1875, the Farmers'

Loan and Trust Company, one of the defendants, filed in the State Court, in said Dewitt County, the Circuit Court, its cross bill in this suit against the Railway Company, praying for the foreclosure and sale of said railway, upon the mortgages made to it by the defendant Railway Company, and by the Danville Urbana, Bloomington and Pekin Railroad Company, which last named mortgage was made April 1st, 1869.

On the 26th day of April, 1876, the said Farmers' Loan and Trust Company filed in said State Court its third amended and supplemental Cross Bill, asking that the same may be substituted for the original supplemental and cross bill. Said Trust Company on said 25th day of April, 1876, filed its petition to remove this cause into this Court: it was then and there removed according to the prayer of the petition, from the Dewitt County Circuit Court to the Circuit Court of the United States for the Southern District of Illinois. And on the 25th day of April, 1876, upon like petition, the cause was removed from the Montgomery Circuit Court, to this Court for the District of Indiana.

FOURTH. That on or about the 1st day of April, 1869, the Danville, Urbana, Bloomington and Pekin Railroad Company made its mortgage to the defendant, The Farmers' Loan and Trust Company, Trustee, and in trust to secure the payment of $2,000,000, and embraced therein a considerable portion of the same premises as are embraced in the mortgages hereinafter named. For a more particular description of said mortgaged premises, reference is made to the various deeds now on file in this Court; and thereafter, on or about July 12, 1869, the said last named Railroad Corporation went out of existence, and became merged into that of a corporation called the Indianapolis, Bloomington and Western Railway Company, and from that time forward had not the power or capacity to acquire any additional property. That afterwards, on or about the first day of October, 1869, the defendant, the said Indianapolis, Bloomington and Western Railway Company, the successor company, made a second mortgage to the defendant, The Farmers' Loan and Trust Company, Trustees, in trust, to secure the payment of $5,000,000, two copies of which are now on file in this case; reference is here made for a more particular description thereof, and of the premises embraced therein.

Afterwards, on or about the 1st day of October, 1870, the said successor railway company, one of the defendants herein, made a third mortgage to Benjamin E. Smith and William Dennison, Trustees and defendants herein, to secure the payment of $1,500,000, to copies of which, now on file in this case, reference is made.

Afterwards, on or about June 28th, 1872, the said last named successor railway company made a fourth mortgage to William Dennison and Robert Turner, Trustees, defendants herein, in trust, to secure the payment of $5,500,000, to copies of which, now on file in this case, reference is made.

Afterwards, on or about the 16th day of November, 1874, the said last named successor railway company made a fifth mortgage, called a chattel mortgage, to the defendant, Joseph T. Thomas, Trustee, in trust, to secure the payment of a large amount of indebtedness, the exact amount not then easily or readily obtainable, to copies of which, on file in this case, reference is made.

FIFTH. Your petitioner avers that all of which several Mortgages, Cross Bills and Supplemental Cross Bills, are on file and of record in this Court, and to which your petitioner begs leave to refer as fully and with the same effect as if they were here set forth at length.

SIXTH. Your petitioner avers that, subsequent to the bringing this suit, the firm of Turner Brothers was forced into involuntary bankruptcy, caused by the defendant Railway Company not paying its indebtedness to said Turner Brothers; that said indebtedness of said Railway Company was very large, averred in the fourteenth paragraph of the Original Bill to be $865,000, exclusive of interest.

That The Farmers' Loan and Trust Company made a suggestion upon the Records of said State Courts, before the cause was removed into this Court, of said bankruptcy, viz., on the 30th day of March, 1876, and proved the same by filing a certified copy of said bankruptcy proceedings and by the affidavit of one Josiah B. Blossom, who is the same individual that subsequently became one of the purchasers of the said mortgaged premises at the sale made by the Masters of this Court, October 30th, 1878, and confirmed by this Court on the 23rd day of December, 1878.

SEVENTH. That, since the filing of said bill, the said Turner Brothers have duly and legally sold certain bonds and shares held by them as collateral security for said indebtedness, which collaterals at their nominal or par value amounted to about $1,200,000, but at said sale said Turner Brothers realized therefrom only the net sum of $285,100, which amount has been duly credited on said indebtedness and has reduced it that much.

That there is now due from said Railway Company to your petitioner the sum of $771,907.68, with interest from October 1st, 1878, as shown more in detail by statement of account hereunto attached, marked "Exhibit A," which is referred to and made a part of this petition.

EIGHTH. That said credit was given to said Railway Company, under the Statute of Illinois which provides "That all persons who may have furnished or who shall hereafter furnish to any Railroad Corporation now existing, &c., any fuel, ties, material, supplies, or any article or thing necessary for the construction, maintenance, operation, or repair of such road, by contract with said Corporation, shall be entitled to be paid for the same as part of the operating expenses of said road, and in

order to secure the same shall have a lien upon all the property, real and personal, and mixed, of said Railroad Corporation," &c. * * * * "Provided suit shall be commenced within six months," &c. * * * * * * *

NINTH. Your petitioner avers that said indebtedness was created by contract with said Railway Company, and that suit was commenced to recover the same within six months, viz.: November 18th, 1874, by filing the original bill in this cause, on that day.

TENTH. Your petitioner learns from a copy of the decree made in this case on the 18th day of July, 1877, that a default in the Cross Bill of said Farmers' Loan and Trust Company had previously been entered against himself and other members of the firm of Turner Brothers, and he has since been informed that said default was entered while said case was pending in the State Court; viz., on or about November 15th, 1876. Your petitioner avers that neither he nor any member of said firm of Turner Brothers had any knowledge of said default until within the last thirty days, when he learned the same from reading a copy of the decree entered on said 18th day of July, 1877; that he and said firm of Turner Brothers, at the time, were in bankruptcy, and disqualified from appearing to prosecute or to defend the issues in this cause. That the Trustee in bankruptcy of your petitioner was never cited to appear, and never did appear in this cause, either to prosecute or to defend the issues involved therein. Your petitioner had, and has the aforementioned claim amounting to about $772,000, which your petitioner claims should have been, and should now be, under the laws of Illinois, either in whole or in part, audited and allowed by the Court as a claim prior in lien to the mortgage debt of said Farmers' Loan and Trust Company. Your petitioner avers that he was a complainant in said suit, and engaged in prosecuting the same in due form of law, and that it was erroneous to enter a default against him in said suit; that it was erroneous to omit to cite in the Trustee in bankruptcy of your petitioner, and the other complainants in the original bill, that it was erroneous to omit to cite him in after his disabilities were removed, and that it was erroneous after the entering of said default, to make any amended or supplemental, or additional bill, as was done by said Farmers' Loan and Trust Company, asking affirmative relief, without re-summoning your petitioner, or his Trustee in bankruptcy, into the Court to answer, or plead to said amended, supplemental or additional bill of complaint.

ELEVENTH. Your petitioner avers that when said Turner Brothers were forced into bankruptcy, John Castree, Esq., of the City of New York, was duly and legally appointed Trusteee to settle said estate under the advice of a committee of creditors then and there appointed for that purpose; that said bankruptcy and appointment of assignee was suggested in open Court and

upon the Record in this case, but that no steps whatever have been taken to make said assignee a party to said suits. That said Castree accepted said appintment and is now engaged in performing the duties thereof. That on or about the 2d day of March, 1876, your petitioner received his discharge in bankruptcy, and from that time forward was again capable of suing and being sued, pleading and being impleaded in this cause. That on or about the 26th day of September, 1878, the said Trustee assigned and sold all the claims, rights and equities, except certain bonds, coupons and shares, which said firm of Turner Brothers had, or ought to have, against said Railway Company, to your petitioner, and thereupon duly and properly conveyed said claims to your petitioner, who now owns the entire right of property therein.

TWELFTH. Your petitioner avers that the defendant the Indianapolis, Bloomington and Western Railway Company, admitting its indebtedness, and desiring to secure the payment of the debt hereinbefore described, on or about the 16th day of November, 1874, made a chattel mortgage to Joseph T. Thomas, Esq., of the City of Philadelphia, of all its equipments, rolling stock, machinery, tools, wood, coal, furniture, safes, iron rails not in tracks, ties, timber, iron, steel, spikes, wheels, oil, waste, stationery, office, station and railway supplies, and all other personal property of any kind or description, in trust to secure the payment of the debts due to your petitioner or to his assignors, and to various other parties named therein.

A copy of which mortgage is on file in this case and to which your petitioner refers.

Your petitioner avers that he supposed and believed that said Thomas, as his trustee, had brought before this Court in this cause, said mortgage, for its adjudication, and, resting under that belief, he as one of the *cestui que trust*, omitted to prosecute the same since his disabilities were removed by his discharge in bankruptcy; that he was not disabused of said belief until the month of October, 1878, when he received a letter from said trustee, informing him that he, the trustee, had done nothing to protect his *cestui que trust*.

Your petitioner avers that he is one of the *cestui que trust* under said chattel mortgage to the amount of about $1,000,000, which sum is now fully and justly due to him; that he has in writing requested the said Joseph T. Thomas, the trustee named in said chattel mortgage, to commence proceedings as trustee under said chattel mortgage, which your petitioner is informed and believes he has recently attempted to do, in this Court, by petition or supplemental bill in this cause.

THIRTEENTH. Your petitioner brings this petition and complaint in his own behalf, and in behalf of all others who are similarly situated or have any interest with him, and who come in and contribute to the expenses hereof.

FOURTEENTH. Your petitioner avers that the Danville, Urbana, Bloomington and Pekin Railroad Company came into existence February 28th, 1867; that it made the mortgage of $2,000,000 described in the Cross Bill of the Farmers' Loan and Trust Company, April 1st, 1869; that it was consolidated with the Indianapolis, Crawfordsville and Danville Railroad Company July 12th, 1869, and from that time ceased to exist as a corporation; that it then and there became dead in law and in fact, and could not and did not acquire any property after that time; that its then existing property passed to and became the property of its representative and successor, the Indianapolis, Bloomington and Western Railway Company, one of the defendants herein.

FIFTEENTH. Your petitioner disclaims any desire to delay the other creditors from getting the money due to them by sale of the mortgaged premises or otherwise, and therefore attaches a a copy of his account hereto, marked "Exhibit A," to the end that the same may be speedily passed upon by the Court or its Master, and that suitable provision may be made in the decree of foreclosure, protecting your petitioner in his just, legal and equitable rights.

SIXTEENTH. Your petitioner avers that the mortgage made by the defendant, The Indianapolis, Bloomington and Western Railway Company to said Trust Company, in so far as it was an executory contract, did not and could not give to said Trust Company any lien upon the equipment and rolling stock and personal property of said railway company, acquired after the adoption of the present constitution of the State of Illinois, viz., July 1, 1870, and that the said Farmers' Loan and Trust Company had not and could not have any lien upon the after acquired personal property, *i. e.*, upon the personal property acquired by the railway company after the adoption of said constitution, because of the failure to record said mortgages as required by the laws of Illinois regarding the record of liens on personal property.

SEVENTEENTH. Your petitioner avers that the personal property of the debtor company, defendant herein, acquired after the adoption of the present constitution of the State of Illinois, viz., July 1st, 1870, is very large in amount and in value; that the Receiver of this Court made an inventory thereof, a copy of which is attached to his report made to the State Courts, from which this suit was removed and filed therein March 19th, 1875; that a copy thereof is filed in this case to which your petitioner refers, and makes a part hereof; that the personal property embraced in said inventory was all embraced in said chattel mortgage, and that no lien thereon existed or now exists in favor of said Farmers' Loan and Trust Company, trustees as aforesaid, because it did not record its mortgage as required by the laws of the State of Illinois.

EIGHTEENTH. Your petitioner avers that said Thomas, the trustee named in said mortgage, on the 16th day of November, 1876, made demand of your receiver in this Court for possession of all the personal property embraced in said chattel mortgage of every kind and description. That your receiver refused to surrende it, or any portion thereof. That since that time, viz., Oct. 30th, 1878, said Farmers' Loan and Trust Company have caused said personal property to be sold, and that Austin Corbin, Giles E. Taintor and Josiah B. Blossom, have purchased the same as agents of and a committee for certain of the *cestui que trust* said Farmers' Loan and Trust Company. Whereby your petitioner avers and claims that the cross complainants in said suit in this Court, the Farmers' Loan and Trust Company and the said Corbin, Taintor and Blossom, became liable to said Thomas, trustee, and to his *cestui que trust*, for the use and value thereof.

NINETEENTH. That the claims of said Farmers' Loan and Trust Company, and of the said Dennison, Smith, Robert Turner, or their successors, are a cloud upon the title and right of your petitioner, and prevents him or other *cestui que trust* from having and enjoying the full right and benefits in and to said property embraced in said chattel mortgage.

TWENTIETH. *Wherefore* your petitioner humbly prays this Court to take his case into consideration and upon consideration of his merits.

1st. That this Court will require all the parties in the Original Bill mentioned, and in the Cross Bill, and in the various amendments or Supplemental Bills filed by the Farmers' Loan and Trust Company, and their successors in the office of trustees, to answer all the allegations herein set forth. The petitioner waives the necessity of their respective answers, being on the oath of said parties.

2d. That this Court will ascertain and give your petitioner judgment for such amount as is justly due to him, and find and declare the same to be a first lien upon the property embraced in and covered by said chattel mortgage.

3d. That you give whatever sum is found to be due him, its proper lien upon the mortgaged premises, or upon the proceeds derived from the sale thereof.

4th. That this Court will, by proper order, decree, or other process of the Court, aid the petitioner in enforcing any lien by sale or otherwise, which he has upon the mortgaged premises or upon the proceeds derived from its earnings, or from the sale of said mortgaged premises.

5th. That this Court will require an account from the Farmers' Loan and Trust Company, for each and every article of property which it has caused to be sold, on which the petitioner had a superior lien, and that upon ascertaining its value it will enter up its judgment against said Farmers' Loan and Trust Company, directing it to pay to your petitioner and the

other *cestui que trust*, in money, the full and just value of said property.

6th. That this Court will remove the cloud upon the rights and property of the petitioner and other *cestui que trust*, in and to all the property embraced in said chattel mortgage.

7th. That the Court will direct to be paid to your petitioner such reasonable cost, commissions, expenses, allowances, and charges, as the Court shall find to be due to him for services and disbursements, in and for the performance of his duties, and those of his solicitors, attorneys, and employees in the prosecution of this cause.

8th. That this Court will, by its proper decree, forever bar and foreclose said debtor railway company and all persons claiming, by, through, or under it, from all equity of redemption and claim upon, in, or to said property embraced in said chattel mortgage.

9th. That the Court will grant such other, further or different relief as to equity appertain, and your petitioner, as in duty bound, will ever pray.

December 21st, 1878.

JAMES TURNER.

GEOEGE W. KRETZINGER,
Solicitor.

N. A. COWDREY,
Counsel.

STATE OF NEW YORK, }
City of New York. } ss.:

On this day of December, 1878, personally appeared James Turner, the signer of the foregoing petition, and made oath that he had read the same, and that the contents thereof were true of his own knowledge, except where averred to be upon information and belief, and that he believes those averments to be true.

Sworn to before me, the day }
and year before named. }

Notary Public.

"Exhibit A."

Attached to the petition of James Turner, in suit of Malcomb Turner, *et al.*, vs. Indianapolis, &c., Railway Co.

ACCOUNT No. 1.

ACCEPTANCES.

Indianapolis, Bloomington and Western Railway Company, in account with Turner Brothers.

DEBIT.

1873.			
September	29.	To cash loaned on your drafts by us, to pay coupons on bonds	$110,000 00
Dec'r.	30, 31.	To cash loaned on your drafts, accepted by us to pay coupons on bonds	60,000 00
			$170,000 00
1874.			
January	1.	To balance due, brought forward	$170,000 00
Feb'y	25, 27.	" Your drafts, accepted by us	35,000 00
March	3, 4, 6.	" " " "	70,000 00
April	1.	" " " "	300,000 00
"	2.	To $16,660 gold at 112 per cent., loaned you with which to pay coupons on Extension Bonds	18,659 20
"	2.	To $175,000 gold at 113¼, loaned you with which to pay coupons on Bonds of Danville & Urbana	198,625 00
May	30.	To your drafts accepted by us	25,000 00
June	2, 6, 8, 10	" " "	95,000 00
July	18.	To cash p'd, coupon notes, Griggs, Welsh and Mead's expenses to Europe	2,083 34
October	7.	To cash paid	4,000 00
"	14.	" " Springfield Bank	500 00
			$918,867 54
November	18.	To balance carried forward	$148,948 65
December	8.	To cash paid in settlement of foreign credit with Drexel, Morgan & Co., by which release of collaterals was obtained	20,000 00
			$168,948 65
1875.			
January	1.	To balance brought forward	$118,948 65
1878.			
October	1.	To interest on this account to date, 3 years, 9 months	31,223 00
			$150,171 65

CREDIT.

1873.				
December	31.	By bal. due brought to new account	$170,000 00	$170,000 00
1874.				
February	25.	By cash from sale of acceptances	$9,798 06	
November	6.	By cash from sale of acceptances	29,335 00	
"	4.	By cash from sale of acceptances	19,609 44	
"	6.	By cash from sale of acceptances	19,463 89	
"	26.	By cash from sale of acceptances	48,761 42	
"	31.	By cash from sale of acceptances	126,552 52	
"	31.	By sale of $5,000 bonds	4,000 00	
April	1.	By cash from sale of acceptances	38,926 87	
"	2.	By cash from sale of acceptances	19,596 12	
"	4.	By cash from sale of acceptances	19,540 00	

May	11.	By your drafts returned	$15,000 00	
"	19, 20, 21.	" " "	59,000 00	
June	6, 8, 10.	" " "	47,000 00	
"	26, 29,	" " "	20,000 00	
July	1.	" " "	15,000 00	
"	15.	By sale of $141,000 b'ds, sold in Europe	91,564 94	
September	24.	By your drafts returned	50,000 00	
Oct.	5, 6, 14.	" "	115,000 00	
"	14.	By gold coupons returned unpaid, $3,885 at 112½	4,270 63	
"	14.	By currency, ditto	1,360 00	
"	17.	" your draft returned	25,000 00	
November	18.	" bal. carried forward	148,948 65	
				$918,867 54
1874.				
December	8.	By your draft returned	$50,000 00	
"	31.	" bal. carried to new account	118,948 65	
				$168,948 65
1878.				
October	1.	By balance brought over to account No. 2	$150,171 65	
				$150,171 65

ACCOUNT No. 2.

CASH ACCOUNT.

Indianapolis, Bloomington and Western Railway Company in accoun' with Turner Brothers.

DEBIT.

				Interest.	
1873.					
August	22.	To cash loaned you	Days 128	$44,957 52	$76,000 00
Sept.	1.	" "	" 119	9,970 82	430,899 58
Oct.	1.	To cash loaned you to pay coupons	" 89	707 77	46,908 32
Nov.	6.	To cash loaned you to pay coupons	" 55	592 59	55,431 76
Dec.	31.	To cash loaned you to pay coupons	" 1	3 80	19,844 06
		Balance of interest			13,166 54
					$642,250 26
1874.					
January	1.	To balance brought forward	Days 360	$44,957 52	$642,250 26
"	2.	To cash loaned you to pay coupons	" 358	4,421 62	62,082 69
Dec.	31.	To balance on interest			49,379 14
					$753,712 09
1875.					
January	1.	To balance brought forward	Days 133	$19,491 83	$753,712 09
Dec.	31.	To interest on balance, May 13th	" 227	33,268 00	
"	31.	To balance of interest			52,759 83
					$806,471 92
1876.					
January	1.	To balance brought forward			$521,371 93
1878.					
October	1.	To interest to date, 2 years and 9 months			100,364 11
"	1.	To balance from account No. 1			150,171 65
					$771,907 68

1878.						
October 1.	To balance due this date					$771,907 68

NEW YORK, 1878.

S. E. & C.

CREDIT.

1873.						
Dec. 31.	By balance brought forward					$642.250 26
						$642,250 26
1874.						
Dec. 31.	By balance					$753,712.09
1875.						
May 13.	By	$862,000	bonds sold	(collaterals)		$189,640 00
" 13.	"	94,000	"	"		21,150 00
" 13.	"	22,000	"	(collaterals)		37,610 00
" 13.	"	58,000	"	C. C. & I. C.		
" 13.	"	40,000	"	(collaterals)		8,800 90
" 13.	"	124,000	"	"		27,900 00
" 13.	"	$1,200 000	"	"		$285,100 00
Dec. 31.	" bal. brought forward to new account					521,371 02
						$806,471 00
1878.						
October 1.	By balance due October 1st, 1878					$771,907 68
						$771,907 68

Additional certificate or transcript of Turner et al. vs. Farmers' Loan and Trust Co. et al. U. S. Supreme Ct., No. 120, Oct. 3, 1882.

UNITED STATES OF AMERICA,
Southern District of Illinois, in Circuit Court. } ss.:

I, JOHN A. JONES, Clerk of said Court, do hereby certify that the printed record, certified by me October 15th, 1879; in a certain cause wherein Malcolm C. Turner et al. are complainants in original bill, and Indianapolis, Bloomington and Western Railway Company are defendants; Farmers' Loan and Trust Company is complainant in cross bill, and the Indianapolis, Bloomington and Western Railway Company et al. are defendants; Charles W. Smith and Robert Turner are complainants in cross bill, and Indianapolis, Bloomington and Western Railway Company et al. are defendants, and John T. Thomas and Benjamin E. Smith are complainants in cross bill, and Indianapolis, Bloomington and Western Railway Company et al. are defendants, contains all the evidence taken in said case, except such as was taken upon intervening petition for the purpose of ascertaining amounts due claimants, as fully as same appear of file at this date in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at Springfield.

in said district, this thirty-first day of October, A. D. 1882.

[SEAL.] JOHN A. JONES,
Clerk.

CHANCERY SUMMONS ON CROSS BILL.

STATE OF ILLINOIS, } ss.:
DeWitt County. }

THE PEOPLE OF THE STATE OF ILLINOIS TO THE SHERIFF OF DE WITT COUNTY. GREETING:

We command you to summon Malcolm C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner, and Joseph S. Decker, copartners, under the firm name of Turner Brothers, The Indianapolis, Bloomington and Western Railway Company, William Dennison, Benjamin E. Smith, Robert Turner and Joseph T. Thomas, if they shall be found in your county, personally, to be and appear before the Circuit Court of De Witt county, on the first day of the next term thereof, to be holden at the Court House, in Clinton, in said De Witt county, on the 3d Monday in March next, to answer unto The Farmers' Loan and Trust Company in its certain cross bill of complaint for relief, &c., filed in said Court, on the chancery side thereof; and have you then and there this writ, with an endorsement therein, showing in what manner you shall have executed the same.

Witness: WILLIAM H. HARRISON, Clerk of said Circuit Court, and the judical seal thereof, at his
[SEAL.] office in Clinton, in said De Witt county, this 7th day of December, A. D. 1875.

WILLIAM H. HARRISON,
Clerk.
By THOMAS W. WHEELER,
Deputy.

SHERIFF'S RETURN.

STATE OF ILLINOIS, } ss.:
De Witt County. }

I have duly served the within by reading and delivering a copy of the same to John C. Short, who is one of the directors of the said Indianapolis and Western Railway Company, the president of said company not being found in said county, and none of the other within named defendants being found in my county, this 7th day of December, 1875.

LYMAN BARNETT,
Sheriff.

(Indorsed). Filed this 11th day of March, 1876.

WM. H. HARRISON,
Clerk.

PETITION FOR REMOVAL OF CAUSE.

STATE OF ILLINOIS, }
DeWitt County, } ss.:

IN THE CIRCUIT COURT IN CHANCERY.

MALCOLM C. TURNER and others
vs.
THE INDIANAPOLIS, BLOOMINGTON and WESTERN RAILWAY CO., THE FARMERS' LOAN AND TRUST CO., and others.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE INDIANAPOLIS, BLOOMINGTON and WESTERN RAILWAY COMPANY and others.

PETITION FOR REMOVAL TO THE CIRCUIT COURT OF THE UNITED STATES.

Your petitioner, The Farmers' Loan and Trust Company, the sole complainant in the said States, that there is in the above suit a controversy in which the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs; that it is a bill in equity filed for the foreclosure of two mortgages upon a railroad running through the States of Indiana and Illinois, and upon the rolling stock appurtenant thereto; one of said mortgages being for a principal debt of three millions of dollars, and the other for a principal debt of two millions of dollars, with large arrearages of interest on both of said mortgages, and that the said controversy involves, among other things, the validity of said mortgages, and the validity of a provision of the Constitution of the State of Illinois, which declares that the rolling stock of railroads shall be deemed to be personal property and liable to attachment by judgment creditors, which provision your petitioner is advised by counsel, and believes to be contrary to the provisions of the Constitution of the United States; and the controversy arises, therefore, partly under the Constitution of the United States.

That your petitioner at the time of the commencement of the original suit, was, and from thence hitherto has been and still is a citizen of the State of New York, and that each and every of the defendants of the amended and substituted bill of your petitioner was, at the time of the commencement of said original suit, and ever since has been, and still is, a citizen of another and different State than the said State of New York; that the said cause is not, and never has been, in a condition to be tried in this Court, nor has the same been tried for the reasons that the defendants, who are necessary parties, are not, as yet, all in Court; the issues have not been made up, or

the evidence taken, that all the said defendants now are, were at the commencement of the original suit, and ever since have been citizens of the State of Illinois, except William R. Arthur and Ellen Wright, who are citizens of Missouri, and were at the commencement of the original suit, and ever since have been; and William Dennison and Benjamin E. Smith, who were at the time of the commencement of the original suit, ever since have been, and still are citizens of the State of Ohio, and except Joseph T. Thomas, who was at the time of the commencement of the original suit, ever since has been, and still is a citizen of the State of Pennsylvania, and except Malcolin C. Turner, James Turner, Thomas E. Turner, Robert Turner, Archibald Turner, George M. Turner and Joseph S. Dickson, copartners doing business under the name, firm and style of Turner Brothers, each and every of whom were at the time of the commencement of the original suit, ever since have been, and still are citizens of the State of New York, and who were complainants in the original bill, but against whom default has been taken for want of prosecution, and for not answering the cross bill of your petitioner, and who are not proper parties to this action, and against whom this petitioner has no controversy in this suit, but who are nominal parties retained by order of Court for the purpose of protecting a Receiver appointed in the original suit.

Your petitioner has reason to believe, and does believe, that from prejudice and local influence, it will not be able to obtain justice in this Court.

Your petitioner desires to remove this action before the trial thereof, into the next Circuit Court of the United States, to be held in the Southern District of Illinois, at its next session, in pursuance of the laws of the United States in such case made and provided; that your petitioner is ready and willing to give such good and sufficient security as this Court may direct for its doing all acts and things required to be done by law upon such removal of this suit into the United States Court, and it tenders herewith and files its bond in conformity to the law, conditioned that it will enter in said Circuit Court of the United States next to be held, on the first day of its session, copies of all process, pleadings, depositions, testimony and other proceedings in this suit, and that it will do such other appropriate acts as by the laws of the United States are required to be done on a removal of a cause into the United States Court:

Wherefore, your petitioner prays that this Court will accept this petition and the bond herewith tendered and that the said cause may be removed into said Circuit Court of the United States for the Southern District of Illinois, and that no further proceedings may be had therein in this Court.

And it will ever pray, etc.

WILLIAMS, BURR & CAPEN,
Solicitors for the Farmers' Loan and
Trust Company.

STATE OF NEW YORK,
City and County of New York, } ss.:

ROSEWELL G. ROLSTON, being duly sworn on his oath, deposes and says that he has read the foregoing petition and knows its contents, and that the same is true so far as relates to his own acts, and the acts of the Farmers' Loan and Trust Company, and, so far as it relates to others, he believes it to be true; and deponent further says that he is the President of the said Trust Company, and that he has reason to believe and does believe that, from prejudice and local influence, the said Trust Company will not be able to obtain justice in the said Court in the above-entitled suits.

R. G. ROLSTON.

Sworn to and subscribed before me, at the City of New York, this 21st day of April, A. D. 1875.

W. D. SEARLS,
Notary Public,
New York County.

[SEAL.]

WILLIAMS, BURR &
Solicitors for the Farmers' Loan and Trust Company.

Filed April 25th, 1876
(Indorsed.)

WM. A. HARRISON,
Clerk.

BOND FOR REMOVAL OF SUIT.

STATE OF ILLINOIS,
DeWitt County. } ss.:

IN THE CIRCUIT COURT.

IN CHANCERY.

MALCOLM C. TURNER and others
vs.
THE INDIANA, BLOOMINGTON AND WESTERN RAILWAY COMPANY, THE FARMERS' LOAN AND TRUST COMPANY and others.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY and others.

Know all men by these presents, that the Farmer's Loan and Trust Company as principal, and Robert E. Williams and

Geo. W. Parker as sureties, are held and firmly bound unto the defendants in the above-entitled suit, their heirs, successors and assigns in the sum of one thousand dollars, lawful money, to the payment whereof we do hereby bind ourselves, our heirs executors, administrators and successors jointly and severally firmly by these presents.

Sealed with our seals.

Dated this 24th day of April, A. D. 1876.

Now, the condition of the above obligation is such that if the said Farmers' Loan and Trust Company shall enter into the Circuit Court of the United States for the Southern District of Illinois, at its next session, to be held in the City of Springfield in the said District on the first Monday of June, 1876, a copy of the record in the above-entitled suit, and shall well and truly pay, or cause to be paid, all costs that may be awarded by the said Circuit Court of the United States, if said Court shall hold that said suit is wrongfully or improperly removed thereto, then this obligation to be void, otherwise to be and remain in full force and virtue.

THE FARMERS' LOAN AND TRUST COMPANY,
By H. G. PRESCOTS.
By M. W. PARKER.
ROBERT E. WILLIAMS.

In presence of }
}

Attest: GEO. P. FRITCH, JR..
[SEAL]
(Indorsed.) Filed April 25th, 1876.
WM. H. HARRISON,
Clerk.

The affidavit of non-residence on publication notices are omitted by agreement of counsel.

WITHDRAWAL OF H. CRAWFORD AS SOLICITOR FOR COMPLAINANTS.

DEWITT CIRCUIT COURT.

TO MARCH TERM, 1876.

MALCOLM C. TURNER and others

AGAINST

THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY and others.

} Chancery.

STATE OF ILLINOIS, COOK COUNTY, SS.:

HENRY CRAWFORD, upon oath, says that he is the solicitor who instituted the above-entitled action; that the plaintiffs were the members of a firm engaged in the business of banking in the City of New York, under the firm name of Turner Brothers. Sometime in the summer of 1875, the said firm were adjudicated bankrupts by the order of the District Court of the United States, for the Southern District of New York, and such proceedings are still pending; that in the fall of 1875 this affiant was applied to by one John Castro, of New York, representing himself as the assignee of said bankrupts, to know on what terms this affiant would continue as such solicitor, and this affiant declined all further employment in that behalf, and notified the said assignee that he should withdraw his appearance as solicitor for complainants, which he now prays may be done.

H. CRAWFORD.

Subscribed and sworn to before me, this 27th day of March, A. D. 1876.

[SEAL.] SAMUEL P. MCCONNELL.

(Indorsed.) Filed March 29th, 1876.

WM. H. HARRISON,
Clerk.

MOTION TO DISMISS ORIGINAL BILL.

IN THE CIRCUIT COURT,

DEWITT COUNTY.

MARCH TERM, 1876.

MALCOLM C. TURNER ET AL.
vs.
FARMERS' LOAN AND TRUST COMPANY ET AL. } In Chancery.

And now comes the Farmers' Loan and Trust Company, by Johnson, Williams & Campbell, its attorneys, and Denny, Blossom & Adriance, by Wiley & Parker, their attorneys, and moves the Court to dismiss the bill filed in said cause by Malcolm C. Turner et al., and assign therefor reasons as follows:

1st. Because the said bill was filed in this Court on the 18th day of November, 1874, against the Indianapolis, Bloomington and Western Railway Co., the Farmers' Loan and Trust Co. of New York, Wm. Dennison and Benj. E. Smith, of Ohio, and Joseph T. Thomas, of Pennsylvania, and a Receiver appointed in pursuance of the prayer of said bill to take possession of the road and property of said I., B. and W. Railway Co. That the summons issued in said cause was, on the 21st day of November, 1874, returned served on said I., B. and W. Railway Co., and not found as to the other defendants named in said bill. That said complainants, after the appointment of said Receiver, abandoned said cause, and their attorney subsequently only appeared in this Court, in said cause, for and on behalf of said Receiver, and said complainants have not, either in person or by attorney, appeared in this Court in said cause, nor caused any steps to be taken in said cause to bring the other defendants in said bill into this Court, or to take any steps in said cause looking to a final decree herein, or otherwise.

2d. That said Farmers' Loan and Trust Company filed its answer to said complainants' bill in said cause on February 2d, 1875, and said Denny, Blossom, and Adriance, who became parties defendant to said bill by leave of this Court, filed therein answer to said bill on the 17th March, 1875, to which said answer no replications have been filed or other notice given thereto by said complainants.

3d. That said complainants have by acts and words given out and proclaimed that they have abandoned said cause, and the affairs in general of the I. B. & W. R. Way Co., they having failed financially, and under proceedings in bankruptcy distributed their bonds of said company to their creditors, and hence

no longer have any further interest legal or equitable in said company or its property.

4th. That said complainants are all residents of the State of New York, and have no longer any attorney or agent, within the jurisdiction of this Court, upon whom the requisite notices can be served in the prosecution of said cause to final decree.

5th. Because said bill contained no equity, and was only filed to wrest the property of said company from its possession and from the trustees of said first and second mortgages of said company who were legally entitled thereto, as per the terms of said mortgages.

6th. That the representatives of the 1st and 2d mortgage bond-holders of said railway company, and others in said cause, are in Court ready to proceed to a final hearing thereon, but are delayed and embarrassed by the inaction and non-appearance of said complainants.

FARMERS' LOAN AND TRUST COMPANY,
By WILLIAMS, JOHNSON and CAMPBELL, its Solicitors.
DENNY, ADRIANCE, and BLOSSOM,
By WILEY and PARKER, its Solicitors.

(Indorsed). Filed March 30th, 1876.

WM. H. HARRISON,
Clerk.

Amended Decree.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF ILLINOIS.

WEDNESDAY, May 8th, A. D. 1878.

MALCOLM C. TURNER ET AL. vs. INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY ET AL.	Original Bill.
4746 FARMERS' LOAN AND TRUST COMPANY vs. INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY ET AL.	Cross Bill.

And now, on this 8th day of May, A. D. 1878, it being at the January Term, 1878, of said Court, the parties hereto having appeared by their respective solicitors, on motion of the Farmers' Loan and Trust Company, complainants in said cross-bill, by R. E. Williams, its solicitors, it is by way of further direction for the execution of the decree heretofore entered herein, of date

July 18th, 1877, considered by the Court and ordered, adjudged, and decreed, that the said original decree, be, and the same is hereby amended and modified as follows:

1ST. The 13th Article thereof, so as to read as follows: 13th, That sale be made subject to judgments for right of way, and to all said legal and valid claims therefor, and also subject to all sums legally due for taxes, which are a lien prior to said mortgages; and also subject to the provisions of certain contracts of lease and purchase heretofore made with Oliver Adams for five hundred box freight cars by said Receiver; and also subject to that portion of such other claims and sums of money as are now under consideration by and as shall be hereafter allowed by this Court, or the Circuit Court of the United States for the District of Indiana, in the causes pending therein and affirmed by the Supreme Court of the United States on appeal, should an appeal be taken in preference to liens of the hereinbefore mentioned mortgages or deeds of trust, for debts due by said railway company for work and labor done, and supplies and materials furnished during a period not exceeding the six months next preceding the first day of December, 1874, in the operation of that portion of the said railroad hereby directed to be sold, without prejudice to the right of the Farmers' Loan and Trust Company to object to the same, and to appeal from any order or orders which may be hereafter made by the Court in relation thereto; which claims, judgments, and taxes, and car contracts and such back pay, labor and supply claims as shall be finally adjudged against the property herein directed to be sold after any appeal so taken, shall be assumed by the purchaser or purchasers, in addition to the amount of the purchase money so bid, and in all cases where judgments obtained against the receiver are appealed from, to the Supreme Court of the United States, and supercedeas granted, the sale of said property hereby directed to be sold shall be subject to the final determination upon said appeal or appeals. And the payment of the amount of any claims so allowed, or of any judgment against the receiver so obtained, shall not be required to be made at or prior to the time of the delivery of the deed, but the said sale shall be made subject to, and the purchaser or purchasers of said property shall agree to pay off so much of the said claims or sums of money as shall be finally allowed in the progress of this cause, on or after such appeal, and the same shall be paid and discharged by said purchaser or purchasers within six months after the entry of an order of this Court, upon a mandate of the Supreme Court concerning matters so appealed from being filed in this Court; and the said deed shall be delivered without payment of said claims or sums of money or any part thereof, upon the purchaser so conditionally agreeing to pay so much and no more of such claims and sums of money as may finally be allowed upon such appeal, and it shall

be competent for the Court to enforce hereafter by a proper order or decree herein or to be added to the foot of this decree any of the conditions or provisions of this 13th Article of this decree.

2. That the 12th Article be amended and modified so as to provide that the publication therein directed shall be made once each week for four consecutive weeks.

3. That the second subdivision of Article Nineteen be modified and amended so as to read as follows: 2. Out of the surplus, if any, to the said complainant the Farmers' Loan and Trust Company, for compensation for its services in this behalf, as trustee, the sum of five thousand dollars, and in addition thereto the sum of six thousand and seventy four dollars for its incidental expenses and disbursements in the carrying on and managing of this suit, and that an allowance be and is hereby made of the further sum of thirty-four thousand dollars to the said Farmers' Loan and Trust Company, as counsel and solicitors' fees herein, of which sum the said Master shall pay to the firm of Wiley & Parker, of counsel herein, the sum of six thousand dollars, and to the firm of Brown & Campbell, of counsel herein, the sum of six thousand dollars, and the balance to the said Farmers' Loan and Trust Company, to be by it distributed to and amongst its other counsel and solicitors.

EXCEPTIONS OF THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY, TO THE MASTER'S REPORT OF SALE MADE OCTOBER 30TH, 1878, FILED NOVEMBER 1ST, 1878.

CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF ILLINOIS.

MALCOMB C. TURNER, ET AL., vs. THE INDIANAPOLIS, BLOOMINGTON AND WESTERN RAILWAY COMPANY, ET AL.	In Equity. Original Bill.
FARMERS' LOAN AND TRUST COMPANY, Trustees, vs. SAME.	Cross Bill.

Now comes the Indianapolis, Bloomington and Western Railway Company, one of the defendants in the above entitled cause, and excepts to the Master's report of the sale of said The Indianapolis, Bloomington and Western Railway Company's property and franchises, and shows the following causes for said exceptions :

1st. The Court had no jurisdiction in the case, because that the principal litigants therein, viz., Malcomb C. Turner, and all the other complainants in the original bill, and the principal defendants in the Cross Bill, were citizens of the City and State of New York, and the Farmers' Loan and Trust Company, the complainant in the Cross Bill, was and is also a citizen of said City and State of New York, and that upon such facts existing, there is no law of the United States authorizing the Circuit Court to take jurisdiction.

That the original proceedings under which said sale was had under a decree of the Circuit Court of the United States, was brought in one of the State Courts of Indiana, said Indianapolis, Bloomington and Western Railroad extending into both of said States, for the purpose of establishing certain prior liens against

said Railroad Company; that such proceedings were had thereon, that a receiver was appointed by said State Courts; several terms of Court after issues were made up in said cause or causes, and ready for hearing in said State Court or Courts, said cause or causes were removed to the United States District Court for the Southern District of Illinois, and the District of Indiana, under the removal Act of Congress, of 1875. That under said removal Act, said Federal Court or Courts did not and could not acquire jurisdiction of said causes for the reason that the petition for removal of said cause or causes was not filed in said State Court or Courts before or at the time at which said causes could be first tried, but long after the same were ready for hearing, and could have been tried, and had been set for hearing from term to term, as will more fully appear from the records of said cause, now in this Court remaining, to which reference is here made.

2d. The issues raised by the pleadings in the original bill, were not determined by the Court particularly those affecting the mortgage made to Joseph T. Thomas, as Trustee, commonly called the chattel mortgage—and no effort was made by publication or subpœna, or otherwise, to bring the Trustee of said chattel mortgage within the jurisdiction of this Court.

3d. This Court had no authority or jurisdiction to amend its decree, made July 18th, 1877, after the then term of the Court had expired, except upon a supplemental bill filed praying for specific relief, or upon a bill of review; that said term of this Court, held on July 18, 1877, expired long before the 8th day of May, 1878, which last named time was of the January Term, 1878, at which time the decree of this Court was attempted to be amended in essential particulars set forth upon the records of this court, to which reference is here made.

4th. That the bid or price, viz.: $1,000,000, at which the mortgaged premises was struck off and sold by the Masters, is an inadequate and insufficient price, and far below the real value of the premises attempted to be sold; that the real value of the property is much greater than $1,000,000.

That among other reasons why the said Masters received so small a bid as $1,000,000 was because of the limited time they kept the bidding open; including the time occupied by reading copies of the advertisement and of the decree, the bidding was kept open but twenty minutes; of which time not more than ten minutes were open for bids or consultation among the would-be purchasers; whereas common practice and fairness requires that the offer of sale should be open for bids for several hours, or at least for one hour.

5th. That said Masters did not advertise said premises for sale for a sufficient time after this Court had given its opinion, October 9th, 1878; that the law of redemption of real estate, as determined by the Supreme Court of the U. S., in the case of Brine

vs. Hartford Fire Insurance Company, 6th Otto, 627, did not apply to railroads.

That until the opinion of this Court had been published, which it was on Oct. 9th, 1878, it was the received opinion of those learned in the law, that said railroad could not be sold under the decree as it then stood, but that the same would have to be amended, and the property re-advertised for sale, subject to the laws for redeeming real estate from sale, as laid down by the Supreme Court of the U. S. in said Brine case; that the time from the publication of the opinion of this Court, October 9th, 1878, to the day of sale, October 30th, 1878, was not sufficient for intending purchasers to make the necessary financial arrangements for the large sums required with which to buy said road; that if longer notice had been given of the intended sale, after the publication of said opinion, October 9th, 1878, the premises would have sold for a larger sum than $1,000,000.

6th. That the terms of the sale were made unusually and unduly onerous by the Court, at the instance and request of the parties who claim to have purchased the premises.

It was required of any person proposing to bid that he should first deposit $50,000 with the Masters offering the premises for sale, and if the bid was accepted, that the accepted bidder should forthwith pay to the Masters an additional $50,000, making in all, $100,000.

That the premises would have sold for more than $1,000,000 had the terms required from proposed bidders been less onerous.

7th. That the Masters were unable to inform those desiring to bid what amount of claim or debt the premises were sold subject to the payment of, by reason of which those desiring to bid for the purchase of said premises, could not form any intelligent judgment as to what sum to bid, or if they did bid and were accepted, what sum of money they assumed by the purchase.

That the premises would have sold for more than $1,000,000 if proposed purchasers could have known what sum of money, or within $100,000 of what sum of money or obligations they would have to assume or to pay.

8th. That the Masters were unable to inform those desiring to bid what and how much equipment, supplies and other personal property was offered for sale, or would be embraced in any sale made at that time—for that certain questions were then pending undetermined by this Court, which it decided in one way would find all or nearly all of the equipment supplies, and other personal property to be subject to and embraced in the chattel mortgage, of which the exceptor is the grantee. That undetermined claims or liens upon said equipments, supplies, &c., were pending before this Court to such a vast amount, in all amounting to more than $1,000,000; that a pro-

posed purchaser could form no intelligent judgment as to what sum to bid for said premises, or what the same would cost him if his bid were accepted, or what property he acquired or would acquire by an accepted bid at said Master's sale.

That the premises would have sold for more than $1,000,000 if those desiring to bid could have known the approximate amount of said liens and debts, and approximately what equipment, supplies, and other personal property he would get by an accepted bid.

9th. The said Railway Company pledges itself to this Court that if the Court will again offer said premises for sale, that the same shall sell for more than $1,000,000 and the cost of making the sale.

10th. In support of said exception the said Railway Company asks leave to refer to the records of this Court, and to the receiver's reports and accounts in this case, and to be allowed to produce witnesses and affidavits to sustain the same.

Dec. 4th, 1878.

THE INDIANAPOLIS, BLOOMINGTON & WESTERN RAILWAY CO.
By N. A. COWDREY,
Attorney.

GEO. W. KRETZINGER, Solicitor.

A copy of the bondholders, agreement under which the purchase was made, was attached to the Masters' report of the sale, and is found printed in Transcript 1212.

16552

FILED
OCT 23 1882
JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

JAMES TURNER ET AL.,
Appellants,
vs.
THE FARMERS' LOAN & TRUST CO. ET AL.,
Appellees.

Oct. Term, 1882.
No. 120.

BRIEF OF APPELLANTS.

GEORGE W. KRETZINGER,
N. A. COWDREY,
Counsel for Appellants.

BURGOYNE, Law Case Printer (Law Telephone 587), 57, 59 & 61 Park Street, N. Y.

SUPREME COURT OF THE UNITED STATES.

JAMES TURNER ET AL.,
Appellants,

vs.

THE FARMERS' LOAN AND TRUST COMPANY ET AL.,
Appellees.

October Term, 1882.

No. 120.

Brief of Geo. W. Kretzinger and N. A. Cowdrey for James Turner et al, Appellants.

STATEMENT OF FACTS.

Suit by bill in equity was commenced November 18th, 1874, by Turner Brothers, as *cestuis que trust*, under certain mortgage or trust deeds, copies of which are attached to the complaint, in behalf of themselves and all other bond creditors and floating debt creditors having liens upon the property, in the Circuit Court of the State of Illinois for De Witt County, and in the Circuit Court of the State of Indiana for Montgomery County, against the Indianapolis, Bloomington and Western Railway Company, hereinafter called the I., B. & W. R'y Co., The Farmers' Loan and Trust Company, Wm. Dennison, Benj. E. Smith, Robt. Turner and Joseph T. Thomas.

Exhibits were attached to the bill as follows:

"Exhibit A." A mortgage made by the Danville, Urbana, Bloomington and Pekin Railroad Company to the Farmers' Loan and Trust Company, to secure the payment of $2,000,000 and interest, dated April 1st, 1869.

"Exhibit B." Articles of consolidation between the Danville, Urbana, Bloomington and Pekin Railroad Company, and the Indianapolis, Crawfordsville and Danville Railroad Company. (This exhibit appears to have been omitted in the printed transcript, by mistake, and a copy of the mortgage, constituting Exhibit C, substituted in its place).

"Exhibit C." A mortgage made by the I., B. & W. Ry. Co., to the Farmers' Loan and Trust Company, dated Oct. 1st, 1869, in trust to secure the payment of $5,000,000, of which but $3,000,000 was issued.

"Exhibit D." A mortgage made by the I., B. & W. Ry. Co., to William Dennison and Benjamin C. Smith, in trust to secure the payment of $1,500,000, dated Oct. 1st, 1870.

"Exhibit F." A mortgage made by the I., B. & W. Ry. Co., to Wm. Dennison and Robt. Turner in trust to secure the payment of $5,500,000, dated June 28th, 1872.

"Exhibit G" printed on p. 236 of Transcript. A mortgage made by the I., B. & W. Ry. Co., to Joseph T. Thomas, dated Nov. 16th, 1874, in trust to secure a long list of creditors found upon page 240 of the transcript—this is commonly called the chattel mortgage.

The original complaint prayed that an account be taken of all the debts and liabilities of the Indianapolis, Bloomington and Western Railway Company,

and of the relative liens and priorities of all the creditors referred to in the bill of complaint to ascertain the amount due to each creditor. "And that the said "mortgages executed by the said corporation on its "real and *personal* property be foreclosed under the "order of this Court," &c., "and that the sale of "said property be ordered to be made under the "direction of the Court, *after the different liens and "priorities are adjusted and decreed as herein-"before prayed.*" And that the proceeds of the sale be distributed according to the rights of the parties as the Court may find.

The Farmer's Loan and Trust Co. filed an answer in De Witt County, 18 , p. 62.

The answer of the Farmers' Loan and Trust Company, as trustee, admits all of the allegations of the original bill of Turner and others, except as to the chattel mortgage made to Thomas, and of that it says (transcript, 67) it has no knowledge of the execution of this trust deed, and avers (transcript 68) that, by the terms of the two trust deeds executed by the I., B. & W. Company to it as trustee, it had the right to enter into and take possession of the railroad and property in controversy at any time after six months had lapsed from the time of such default.

It denies that the complainants, as bondholders, have ever called upon the Farmers' Loan and Trust Company, as trustee, to foreclose either of said trust deeds, or to take possession of the mortgaged property; that, as such trustee, it is willing to execute the conditions imposed upon it, according to the terms and conditions of the two trust deeds, and denies "that the said complainants are entitled to "have the said mortgaged property, incomes, rents

" and franchises sequestered and sold, but that the " right to do so is in this defendant." Prays to be dismissed from the case with costs.

The Farmers' Loan and Trust Company, after answer made, and after filing two cross bills, viz. March 30th, 1876, moved to dismiss the original complaint the Court refused the motion. It omitted to take out summons to bring the defendants on its cross bill into Court until Dec. 7, 1875, at which time it took out subpœna and filed amendment No. 1 to its cross bill, p. 84.

It filed amendment No. 2 to cross bill Feb. 1, 1876, (p. 84). Amendment No. 3 thereto April 25, 1876 (p. 86 and 101). The cross bill No. 3, filed by the Farmers' Loan and Trust Co., is the bill upon which decree was entered.

Cross bill and answers were filed by Denny, Adriance and Blossom, citizens of the State of New York, p. 101 and 117.

Farmers' Loan and Trust Company answered cross bill of Denny, Adriance and Blossom, Aug., 1875, p. 129 and 132.

Cross bills and answers were filed by C. W. Smith, p. 132 and 137.

Thomas, (who had become a trustee in place of Dennison), and Smith, as Trustees, by their solicitor, filed an answer to the cross bill of the Trust Co., Nov. 10th, 1876 (p. 162); they also filed a cross bill on the same day (p. 176 of record, No. 1,212) in which they prayed for a foreclosure of the Dennison and Smith mortgage, (Exhibit D.,) and a sale of the premises. They also set up the chattel mortgage, Exhibit G, see fols. 854 and 883 of the Record No 1,212, printed in record of this case p. 236.

The chattel mortgage, Exhibit G, was called to the

attention of the Court by the original bill, by Thomas and Smith, and by petition of James Turner.

Suggestion of the bankruptcy of Turner Brothers, the original complainants, was made in De Witt County, March 30, 1876 (p. 137). John Castree of New York, was appointed Assignee in Bankruptcy. Record p. 133, 137, p. 273 of Supplemental Transcript. March 2d, 1876, James Turner was discharged in bankruptcy, and all suspended rights restored to him. On the 26th day of September, 1878, said James Turner purchased and received a conveyance thereof, all the debts and rights of property formerly held by his firm Turner Brothers, the original complainants in this suit, and filed a petition in this case setting forth his claims and rights (see supplemental Transcript p. 273, 274).

The I., B. & W. Railway Company was formed by the consolidation of the Indianopolis, Crawfordville and Danville Railroad Company, an Indiana corporation, and the Danville, Urbana, Bloomington and Pekin Railroad Company, an Illinois corporation.

The I., B. & W. Railroad extended from near Indianopolis, Indiana, to Bloomington, Illinois.

The Farmers' Loan and Trust Company filed a petition in De Witt Circuit Court to have the cause removed to the U. S. Circuit Court for the Southern District of Illinois, on April 25th, 1876, 17 months after the suit had been commenced in the State Court.

March 30th, 1876, the Farmers' Loan and Trust Company made a motion in the Circuit Court of De Witt County, to dismiss the original bill brought by Turner Brothers.

A motion to remand the case was made in the U.

S. Circuit Court July 19th, 1876, by the Danville Banking and Trust Company, who had been allowed to intervene in the case as holders of debts purporting to be secured by the chattel mortgage, and by Smith and Thomas. The motions were denied. Record No. 1212, p. 156.

Evidence was taken, and a decree of foreclosure and sale entered in the cause at the June term, 1877, viz.: July 18th, 1877, p. 189.

July 18, 1877, the decree entered in this cause (transcript, 108-9) finds "the equities of the case to "be with the complainant in the cross-bill of the "Farmers' Loan and Trust Company, and that all "and singular the allegations and charges in the "cross bill of said last named complainant con-"tained are true."

The Court does not find that Dennison and Smith, as such trustees, proceeded to foreclose the trust deed executed to them "upon the written request "of the holders of the majority of the said bonds "then outstanding," without which request they were not authorized, as such trustees, to foreclose.

This decree was made against James Turner, the appellant, by default (his rights had previously been suspended by proceedings in bankruptcy, p. 137), and neither he or his assignee had been made a party to the suit, although his rights were restored March 2d, 1876, p. 273-4 supplemental transcript.

No decree was taken against Thomas.

On the 3d day of September, 1877, at the June term of the Court, a decree was entered in the cross bill, p. 199.

On the 8th day of May, 1878, at the January term

of the Court, an amendment to the decree was made, to the original decree, p. 288 of supplemental transcript, and, by such amended decree, it "decreed that the said original decree be and the same is " hereby fully reaffiirmed, except as to the follow- " ing amendments in which respect alone the said " decree is modified." Then follows modification, see supplemental record, p. 288.

October 30th, 1878, James Turner, assignee of Turner Brothers, filed a petition for liberty to intervene by answer or cross bill to set up his rights, p. 205.

Turner's petition stated substantially that the firm consisting of complainants had been adjudicated bankrupts and that the interest for such complainants stated and set forth in their original bill had been sold by the assignee in bankruptcy under order of Court duly made, and that he had become the purchaser thereof and as such purchaser desired to have his rights adjudicated, and especially to be permitted to appear and maintain the trust deed executed to Thomas which was a security for all, or for a large portion of the claim so purchased by Turner from the Assignee of the Turner estate.

December, 1878, Turner filed another petition, setting forth his rights and claims, p. 270 supplemental transcript.

Evidence was taken on both petitions, but no action of the Court was had thereon.

October 30th, 1878, sale of the premises was made under the decree. Report of Master, p. 220.

November 1st and 30th, 1878, exceptions to report of Master were filed by James Turner (p. 227), and by the I., B. & W. Railway Company, p. 271 Supplemental Record.

December 21st. Joseph Thomas, trustee, filed petition to have cause reheard, and his rights under the chattel mortgage adjudicated for the purpose of submitting the rights of his *cestui que* trusts under the chattel trust deed to the Court for determination (transcript 231-6). The Court disregarded this petition and confirmed sale of property.

It is further averred that Thomas, as such trustee, made a demand upon the Receiver of the railroad, November 16, 1876, for possession of all the personal property embraced in the trust deed to him. The trust deed is attached marked, exhibit A, to the petition. (Transcript, 236).

December 23d, 1878, Court overruled exception and confirmed sale, p. 230.

James Turner and the I., B. & W. Railway Company took an appeal.

Upon this record the appellants assign the following errors:

I. That the U. S. Circuit Court had no jurisdiction in the case, and that all the orders and decrees made by said Court in the case, were erroneous for want of jurisdiction.

II. The Circuit Court erred in decreeing that the railroad, and other property of the appellant be sold without appraisement, and without reference and not subject to the laws of the State of Indiana and Illinois, conferring the right of redemption from mortgage sales.

III. That the Circuit Court erred in ordering the appellant's railroad and other property to be sold to

satisfy the mortgages in the decree without first having ascertained what liens and claims existed prior in lien to the mortgage foreclosed by reason of which no purchaser could tell within $1,000,000 or more of the price he was paying for the mortgaged premises.

IV. That the Court had no jurisdiction to amend its decree made September, 1877, after the then term of Court had expired; that the order of the Court amending said decree on the 8th day of May, 1878, and the sale of appellant's property under the decree thus amended were without jurisdiction and erroneous.

V. That the Circuit Court erred in ordering the cross-bill of the Farmers' Loan and Trust Company to be taken by default, as against the complainants in the original bill in the cause, after their bankruptcy and the assignment of their rights to an assignee who was not made a party to the cause, had been shown.

VI. That the Circuit Court erred in decreeing that the personal property of said railroad company be sold and delivered to the purchasers in disregard of the rights of appellant under the chattel mortgage in the record set forth.

VII. That the Circuit Court erred in refusing to entertain the appellant's petition for leave to intervene, and affirmed the sale of the personal property of said railroad company, and ordered the same to be delivered to the purchasers, in violation of the rights of appellant under said chattel mortgage.

VIII. The Court erred in directing a foreclosure and sale of appellant's property for principal and interest of the debt secured by the mortgage, when

it was neither averred or proven that the debt was due—the principal—had become due.

IX. That the Circuit Court erred in overruling the appellant's exceptions to the Master's report of the sale of said railroad property.

The following exceptions were taken:

(*a*) That the price of $1,000,000 at which said property was struck off and sold by the Master was an inadequate and insufficient price.

(*b*) That the said property was not advertised for sale for a sufficient length of time after October 9th, 1878, when the Court first gave its opinion, that the law of redemption of real estate did not apply to to railroads.

(*c*) That the terms of said sale were made unusually and unduly onerous.

(*d*) That said property was sold subject to various claims the amount of which was wholly uncertain, so that no purchaser could tell within a million dollars or more, what price he was paying for the property.

(*e*) That the Court had no jurisdiction in the case.

(*f*) That the purchasers at said sale was a committee acting as agents of the bondholders of said company; that said Master's report does not disclose who are the principals for whose use said property was purchased, nor the amount to which each of said parties was beneficially interested.

ARGUMENT.

The Appellants' Claim.

I.

The U. S. Circuit Court had no jurisdiction in the case.

The original bill was filed by Turner Brothers in the Circuit Court for De Witt County, State of Illinois, at the December Term, 1874. The cause, one year and a half afterwards, was removed into the Circuit Court of the United States upon petition of the Farmers' Loan and Trust Company, filed April 25th, 1876. The grounds for a removal, as set forth in the petition, are :

FIRST. That the suit involves a controversy arising partly under the Constitution of the United States.

SECOND. That the suit involves a controversy between citizens of different States.

THIRD. That the petitioner has reason to believe and does believe that, from prejudice and local influence, it will not be able to obtain justice in the State Court.

It is claimed, on behalf of the appellants, that the petitioner was not entitled to have the cause removed because the application was not made at the proper time.

The right of removal at the time of filing the petition was regulated by the Act of March 3d, 1875. Under this act the petition for removal must be filed in the State Court "before or at the term at which such cause could be first tried and before the trial thereof."

The original cross bill of the Farmers' Loan and

Trust Company, praying for a foreclosure of the trust deeds executed to it, was filed in February, 1875. The first amendment thereto was filed in December, 1875, the second amendment in March, 1876, and the third amendment April 25th, 1876.

Under the statute regulating the practice in the courts of the State of Illinois at the time when this suit was pending in the Circuit Court of De Witt County, it became the duty of the I., B. and W. RR. Co. and the other defendants to the cross bill of the Farmers' Loan and Trust Company, to plead demur or answer without the service of process; and in default thereof were liable to have a decree upon the cross bill entered *pro confesso*.

Fleece vs. Russell, 13 Ill., 31. (a)
Reed vs. Kemp, 16 Ill., 445. (b)

The I., B. & W. R. R. Co. was served with process at the suit of the Farmers' Loan and Trust Company, December 7th, 1875.

Section 18, R. S. of 1845, p. 95 (R. S. 1877, § 16), is as follows:

"Every defendant who shall be summoned, served with a copy of the bill or petition, or notified as required in this Act, shall be held to except, demur, plead, or answer on the return day of the summons; or if the summons is not served ten days before the first day of the term at which it is returnable, by the first day of the next term; or in case of service by copy of the bill, or by notice at the expiration of the time required to be given, or within such further time as may be granted by the Court; *or in default thereof the bill may be taken as confessed.*"

The summons served upon the I., B. & W. R. R. on December 7th, 1875, Company was returnable on the 3d Monday of March, 1876, and the next

(a) No summons nec. to bring in ~~the~~ ~~part~~ ~~the~~ parties on a cross bill
(b) Debt who files the cross bill must take steps to have it aused

term of the Circuit Court for DeWitt County began on that day. (Supplemental Record, page. 281.)

The I., B. & W. R. R. Company did not except, plead, demur, or answer to the cross-bill of the Farmers' Loan and Trust Company, and was therefore in default at the time when the removal to the United States Court took place. (April 25th, 1876).

It follows that the suit was not removed before or at the first term at which the cause could be tried. The cross-bill of the Farmers' Loan and Trust Company had been filed more than a year before the application for a removal was made. The I., B. & W. R. R. Co. was in default, and the Farmers' Loan and Trust Company was at liberty to enter a decree *pro confesso* at any time. The petition for removal recites that a default had been taken against the complainants in the original bill for want of prosecution and for not answering the petitioners' cross-bill. It is clear, therefore, that the time for a trial had passed.

In McCallon vs. Waterman, 4 Cent. L. J., 413, in the Circuit Court for the Eastern District of Michigan, Brown, D. J., decided that a case cannot be removed from a State to a Federal court after default has been entered and before the same has been set aside. The Court say: "In a defaulted case there is *no trial* in the ordinary sense in which that word is used; but at the same time there is undoubtedly a limit to the time at which such a case may be removed to this Court. Clearly it cannot be removed after judgment. I deem it equally clear that a litigated case could not be removed after verdict and before judgment. The verdict is the conclusion of the trial. It is an adjudication of the questions put in issue by the pleadings, and unless a motion in arrest, or for a new trial is made, the entry of a

Ast. where a cause is at issue
See Stat Ill. 74 p 201 sec 28, 29, 30,
31, 37 also Stat. Ind 76 p 67, 162, 1
Rock 324, 2

judgment follows as a matter of course, except so far as the assessment of damages is concerned. A default has practically the same effect as a verdict. Until set aside, it is a final determination of the matters set up in the declaration. The defendant can take no step in the cause until the default is vacated and can be heard only to question the amount of damages. * * *

"The default, which is an admission of the plaintiff's case, stands in the place of a trial in a litigated action, which is only a determination of the issues made by the pleadings of both parties."

Bright vs. Milwaukee, etc., R. R. Co., 1 Abb. New Cases, 14.

Berriman vs Chetwood Fed Rep 9 p 678

The petition for removal sets up local influence and prejudice as a ground for removal.

The petition for removal was filed too late, even if the Act of 1867, providing for removals on the ground of local prejudice or influence, were in force. Under that Act the removal had to be made "at any time before trial or final hearing of the suit." The time for a trial or final hearing had passed in the case at bar because the defendants in the cross-bill were in default.

McCallon vs. Waterman, *supra.*

But the Act of 1867, allowing a removal "at any time before trial or final hearing," was not in force at this time. It was repealed by the Act of March 3d, 1875. It is well known that the Act of 1867 grew out of the condition of affairs in the Southern States after the War of the Rebellion, and was intended to afford to plaintiffs, who had resorted to the State Courts, the right to transfer their suits to the Federal Courts.

The condition of affairs which had given rise to the Act of 1867 did not exist at the time of the adoption of the Act of 1875. That Act provides fully for the removal of causes, and was evidently enacted to supersede all prior legislation on the subject. It does not enumerate "local prejudice or influence" as a cause for removal, but gives either party the right to remove the cause without the affidavit of local prejudice or influence. Every case removable under the Act of 1867 was also made removable under the Act of 1875, barring the limit of time at which the removal must be made. It was, therefore, wholly unnecessary to retain the Act of 1867 in force, unless the Legislature desired that the more extended limit of time for removals should exist in the cases provided for by this act. This is certainly not what the Legislature intended. The provision allowing removals "at any time before trial" was notoriously the cause of much abuse, as it was often resorted to for the purpose of obtaining delay and protracting the litigation.

Dillon on Removals (3d Ed.), 25.

It was for this reason that the Act of March 3d, 1875, required the removal to be had before or at the term at which the cause could first be tried in all cases where a removal was had on account of the citizenship of the parties.

Section 2 of the Act of 1875 provides for the right of removal of suits "in which there shall be controversy between citizens of different States." Section 3 provides that whenever any party "entitled to remove any suits mentioned in the next preceding section" desires to remove the same, he must file his petition before or at the term at which the cause can be first tried.

The removal in the present case was had for the grounds set forth in Section 2 of the Act of 1875, and, therefore, by the express terms of the third section it must be effected within the time therein limited.

The Court will observe that the Act of 1867 (R. S., § 639, 3) makes the citizenship of the parties the ground of removal. The filing of an affidavit of local influence or prejudice, before or at the filing of the petition, is merely an additional requirement.

A removable under this section is clearly "a controversy between citizens of different States," and "a suit mentioned" in Section 2 of the Act of 1875, and hence it must be removed to the Federal Court, if at all, before or at the term at which it could first be tried.

The construction of the Removal Acts here contended for, has been approved by the U. S. Circuit Courts in a number of cases.

In McMundy vs. The Connecticut General Life Ins. Co., 9 Chicago Leg. News, 324, it was held by Judges McKeenan and Cadwallader that "the Act of 1875 takes the place of all former acts in the requirements which it makes for the removal of all causes to which it is applicable;" that even though a removal was sought under Section 1 of the Act of 1867, embodied in subdivision 3 of Section 639 of the Revised Statutes, the requirement of Section 3 of the Act of 1875, in regard to the nature of the bond extends to such a case, as being a case mentioned in Section 2 of the Act of 1875; that to that extent, at least, the Act of 1875 repeals all prior acts on that subject.

In Torrey vs. Grant Locomotive Works, 14

Blatchf., 269, this decision was approved and followed by his Honor, Mr. Justice Blatchford; and in Farmers' Loan & Trust Company vs. Chicago, Pekin & Southwestern R. R. Co., 9 Biss., 133, the same conclusion was reached by Judge Drummond at the Circuit Court for Northern Illinois.

These authorities apply with full force in the case at bar. Section 3 of the Act of 1875, which prescribes the character of the bond which must be filed; also fixed the time at which the application for removal must, in such case, be made. It provides that whenever any party "entitled to remove *any suits mentioned in the next preceding section*, * * shall desire to remove such suit, * * he may make and file a petition in such suit in such State Court before or at the term at which said cause could be first tried, and shall make and file therewith a bond," etc. The bond and petition go together, and if the one is governed by the Act of 1875, the other must be governed by that Act also.

There was no controversy in this case between citizens of different States, such as would have authorized a removal under the Act of 1867, even if that Act were in full force.

There was no controversy between the Farmers' Loan and Trust Company, a citizen of New York, and the I., B. and W. Railway Company, a citizen of Illinois, because the railroad company did not put in an answer or other plea; there can be no controversy between parties where there is no question to be tried.

Practically the railroad company confessed judgment in favor of the Farmers' Loan and Trust Company.

Whatever controversy there then was in the case,

was between the floating debt holders—claiming to be secured under the chattel mortgage, and represented in the record by the Turner Brothers—citizens of New York. Both parties to the controversy were citizens of the same State, viz., New York.

II.

The Circuit Court had no jurisdiction to alter its decree of July 18th, 1877, at a subsequent term of the Court.

The decree entered at the June term of the Court, 1877, viz., July 18th, 1877, purports to be a final adjudication of the matters put in issue by the original bill of Turner Brothers and the cross-bills of the Farmers' Loan and Trust Company, of Charles W. Smith and Robert Turner, and of Joseph T. Thomas and Benjamin E. Smith, trustees. The decree finds that the mortgages of the Farmers' Loan and Trust Company, and of William Dennison and Benjamin E. Smith, were duly executed by the defendant company; that default was made in the payment of the bonds secured thereby, and that said bonds are still unpaid. It further adjudges and decrees that the mortgaged property be sold by the master, and that the bondholders be paid out of the proceeds of the sale.

The second paragraph of the 20th clause of the decree is as follows:

"And it is further ordered that any of the parties to this action may apply to the Court for such other and further direction at the foot of this decree as may be necessary to carry it into effect, *no other*

question being reserved, except the question as to the amount of the claims or sums of money to be allowed as provided in the fourteenth clause of this decree; and, so far as the same shall be passed upon by the Court, such allowance or disallowance shall take effect as if now incorporated in and passed upon by this decree."

The fourteenth clause of the decree, here referred to, merely provides that the purchaser of the mortgaged property shall assume certain receivers' debts and claims for work, labor, supplies and material done and furnished during the six months next preceding the first day of December, 1874, in the operation of defendants' railroad.

This final decree, entered at the June term, 1877, was amended by the Circuit Court upon motion of the Farmers' Loan and Trust Company at the January Term, 1878, viz. on the 8th day of May, A. D. 1878.

The appellants claim that the Circuit Court had not the power or authority to amend the decree of the June term, 1877, at the January term, 1878. The decree of July 18th, 1877, was final.

It has often been decided by this Court that a decree of foreclosure is a final decree from which an appeal may be taken.

Whiting vs. Bank of the United States, 13 Pet., 6, 15.

Bronson vs. Railroad Company, 2 Black, 524.

The rule is well settled that a final decree in chancery cannot be set aside, or amended upon motion, after the term of Court at which it was rendered.

In *ex parte* Sibbald vs. United States, 12 Peters, 488, 492, Mr. Justice Baldwin, delivering the opinion of the Court, said:

"No principle is better settled, or of more universal application,

than that no Court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes; or, to reinstate a cause dismissed by mistake: from which it follows, that no change or modification can be made, which may substantially vary or affect it in any material thing. Bills of review, in cases in equity, and writs of error, *coram vobis*, at law, are exceptions which cannot affect the present motion."

To the same effect see

Cameron vs. McRoberts, 3 Wheat., 591.
Washington Bridge Co. vs. Stewart, 3 How., 413, 426.
Bank of United States vs. Moss, 6 How., 31.
McMicken vs. Perin, 18 How., 507.
Jenkins vs. Eldridge, 1 Woodb. & M., 61.

It is a settled rule of chancery practice that a decree which has been enrolled "can only be reversed, altered, or explained (except as to clerical errors), upon appeal to the House of Lords, or upon bill of review."

2 Daniell's Ch. Pr. (5th Ed.) 1024, 1019.

In the United States Courts decrees are deemed enrolled as of the term at which they are entered.

Whiting vs. Bank of United States, 13 Peters, 6, 13.

A decree in chancery, whether it be interlocutory or final, cannot be altered on a simple motion. A petition for a rehearing is essential for this purpose. Daniell says: "Clerical mistakes in decrees or orders, or errors arising from any accidental slip or omission, may, at any time before enrollment, be corrected, upon motion or petition, without the form and expense of a rehearing * * * . It is, nevertheless, a principle of the Court that no alteration

can be made in a decree on motion without a rehearing, except in a matter of clerical error or of form, or where the matter to be inserted is clearly consequential on the directions already given."

2 Daniell's Ch. Pr. (5th Ed.), 1029.
Gardner vs. Deering, 2 Edw. Ch., 131.
Goodhue vs. Churchman, 1 Barb. Ch., 596.
Brookfield vs. Bradley, 2 Sim. and Sp., 64.
Brackenbury vs. Brackenbury, 2 Jac. and W., 391.
Boucher vs. Boucher, 3 McArthur, 453.

The practice of granting rehearings in the United States Courts is regulated by Equity Rule 88. It provides that "no rehearing shall be granted after the term at which the final decree of the Court shall have been entered and recorded if an appeal lies to the Supreme Court. But if no appeal lies the petition may be admitted at any time before the end of the next term of the Court, in the discretion of the Court."

The decree of July 18th, 1877, was a final decree, upon which a bill of review could be maintained and from which an appeal lay to this Court.

Whiting vs. Bank of United States, 13 Pet., 6, 15; and cases *supra*.

It follows, according to the express terms of Equity Rule 88, that it could not be altered upon a petition for a rehearing; *á fortiori* it could not be altered upon a simple motion, as in the case at bar.

III.

The Court erred in ordering the company's property to be sold without determining the substantial amount of the prior claims to be assumed by the purchaser and without declaring whether the validity of the chattel mortgage had been passed upon or not.

By the decree of the Circuit Court a purchaser at the Master's sale was obliged to assume the payment of all claims which should thereafter be allowed by the Circuit Court for the Districts of Indiana and Southern Illinois for debts due by said railroad company for work, labor, supplies and material done and furnished during the six months preceding the first day of December, 1874; also the unpaid taxes and all legal and valid claims for right of way. (Transcript, p. 195).

The amount of these claims was wholly unsettled and it is alleged in the exceptions to the sale filed by the appellants, that a purchaser was unable to tell within a million of dollars of the amount of the liability he was incurring.

In addition to the uncertainty as to the amounts which a purchaser was obliged to assume under the express terms of the decree, there was the uncertainty with respect to the rights of creditors under the chattel mortgage.

The Court did not refer to the chattel mortgage in the decree, and there is nothing in the case to show that the rights of the mortgagees have ever been passed upon or adjudicated.

Thomas, the trustee, was never treated as a party to the action in his capacity as trustee of the chattel

mortgage. He appeared in the case merely as joint-trustee with Benj. E. Smith for the purpose of foreclosing the mortgage of October, 1870. Turner Brothers who had originally prayed for a foreclosure of the chattel mortgage had become bankrupt and were out of the case.

The assignee in bankruptcy was not made a party.

Under these circumstances the Court should have distinctly decided whether the chattel mortgage was a prior lien upon the personal property of the company or not. By failing to decide this question the Court left a cloud upon the title acquired by the purchaser, and depreciated the purchasable value of the premises ordered sold by the Court; the Court left a cloud upon the title of the property which prevented purchasers from bidding what the property was fairly worth.

If the chattel mortgage *was* a prior lien on the property, the Circuit Court erred in ordering a sale of the personal property of the railroad company, to satisfy the bondholders, under the real estate mortgages; if the chattel mortgage was *not* a prior lien, the Circuit Court should have so declared it plainly, instead of compelling purchasers to take the risk of deciding the question. No sensible man would be willing to pay a fair price for property, the title of which was clouded by a possible incumbrance of a million and a half of dollars.

The terms of the sale of appellant's railroad, were inequitable in the highest degree. Every bidder at the sale was obliged to deposit $50,000, as security for the *bona fides* of bid, and to pay $50,000 more in cash, on the day of the sale; he was further obliged to pay in cash or receiver's certificates, at the delivery of the deed so much of the receiver's debts as arose in the operation of the road.

The purchaser was further obliged to assume the payment of claims, whose amount he could not know within a million of dollars; and his title was subject to the rights of creditors secured by the chattel mortgage, whatever they might be.

In Pickersgill vs. Brown, 7 La. Ann., 305, the Court said:

> "It is the right of the debtor, under the law, that his property should be sold at a certain price. Here the price was uncertain. It was not for so much over the amounts of the mortgages stated in the certificate, but a bid for so much money, subject to such amounts as might be *bona fide*, and really due under them. * * * *
>
> "The decisions on the subject of invalidities of judicial sales are numerous; and the current of authority is uniform in support of the general doctrine, that the law will not countenance their being made lotteries at the bidding and sources of confusion and strife afterwards."

The same doctrine was expressed by this Court in Jerome vs. Carter, 94 U. S., 735, 736. Mr. Justice Strong, delivering the opinion, said: "When there is substantial doubt respecting the amount of the debts due prior lien creditors, there is obvious propriety in making them parties, that the amount of the charge remaining on the land after the sale may be determined, *and that purchasers at the sale may be advised of what they are purchasing.*"

IV.

The Circuit Court erred in ordering appellant's property to be sold without the right of redemption.

Brine vs. Insurance Co., 96 U. S., 627.

Mason vs. Insurance Co., No. 79, Oct. T., 1882.

The decree of the Circuit Court ordering the foreclosure and sale of appellant's railroad, contains the following clause:

"9th. And it is further ordered and decreed that the said mortgaged property be sold without appraisement, and without reference, and not subject to any law or laws of the said States of Illinois or Indiana, conferring rights of redemption from mortgage sales."

The right of redemption after a sale under a decree of foreclosure of mortgaged real estate was expressly conferred by the statutes of Illinois in force at the time when the mortgages upon appellant's railroad were executed.

Section 13 of the Act of 1845 (Revised Statutes of 1845, page 302–305) is as follows:

"SEC. XIII. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale; and on such sum being paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void."

Section 24 of the same Act is as follows:

"SEC. XXIV. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors, to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under

any such decree in the same manner as is prescribed for the redemption of lands sold upon executions issued upon judgments at common law."

The above provisions of the Act have remained in force, with unimportant alterations, up to the present time.

The Supreme Court of Illinois has decided that the right of a mortgagor, under the 24th section of the Act above quoted, to redeem from a foreclosure and sale of mortgaged lands, cannot be taken away by decree of the Court; and that a decree ordering a sale without redemption is erroneous.

Farrell vs. Parlier, 50 Ill., 274.
DeWolf vs. Haydn, 24 Ill., 525.
Rhinehart vs. Stevenson, 23 Ill., 524.

In Brine vs. Insurance Co., 96 U. S., 627, this Court decided that the same rule must be applied to a decree of foreclosure in the Federal Courts. The case was an appeal from the Circuit Court of Northern Illinois, and the right of redemption was claimed under the same statute as in the case at bar. Mr. Justice Miller, delivering the opinion of the Court, said: "The Legislature of Illinois has prescribed, as an essential element of the transfer by Courts in foreclosure suits, that there shall remain to the mortgagor the right of redemption for twelve months, and to judgment creditors a similar right for fifteen months, after the sale, before the right of the purchaser to the title becomes vested. This right, as a condition on which the title passes, is as obligatory on the Federal Courts as on the State Courts, because in both cases it is made a rule of property by the Legislature, which had the power to prescribe such a rule."

Is a railroad "lands" within the meaning of the statute conferring the right of redemption?

It appears plainly from the wording of the whole act relating to judgments and executions, that section 24, conferring the right of redemption from mortgage sales of "lands" was intended to include all real estate of every description, as distinguished from personal property or chattels (see Gross's Statutes of Illinois, 1869, chapter 57, title "Judgments and Executions").

Section 1 provides that "all and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment has been, or hereafter shall be, obtained in any Court of record, either at law or in equity * * * shall be liable to be sold on execution," etc. "The term 'real estate' in this section shall be construed to include all interest of the defendant or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise for a conveyance, or as mortgagee or mortgagor of lands in fee, for life or for years."

Section 3 provides that the legal holder of any certificate of purchase "of lands from the United States" shall be deemed to be within the true intent and meaning of this chapter.

Section 5 provides that the judgment plaintiff may have execution "against the goods, chattels, lands and tenements" of the defendant.

Section 11 provides that "no lands or tenements" shall be sold by virtue of any execution aforesaid, unless such sale be at public vendue, etc. The subsection added by the laws of 1857, provides that, "In addition to the notices now required by * * (the foregoing) section of the sale of *real estate*, it shall be the duty of officers who may make sales of *land* under said section, to cause a similar notice to that therein required, to be published," etc.

Section 12 provides that whenever any "lands or tenements" shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer to execute to the purchaser a certificate, etc.

Section 13 provides that any defendant whose "lands or tenements," shall be sold by virtue of any execution may redeem the same.

Section 14 provides that after the expiration of 12 months and at any time before the expiration of 15 months from the sale of any "lands or tenements" under the preceding sections, any judgment creditor may redeem.

Section 15 provides that any judgment creditor having so redeemed "such lands" shall be considered as having bid at such sale the amount of said redemption money.

Section 16 provides that any judgment creditor may redeem the "lands or tenements" previously sold upon execution.

Section 18 provides that the certificate given to the purchaser under the execution, shall be assignable, and that in case "the lands mentioned in such certificate" shall not be redeemed, he shall be entitled to a deed.

Section 19 provides that the deed shall contain a statement of the judgment upon which "the lands" therein described were sold.

Section 21 provides that the deed so executed shall be *prima facie* evidence that the provisions of the law in relation to "sales of lands upon execution" were complied with.

Section 22 provides that if such "lands or tenements" shall not be redeemed, it shall become the duty of the sheriff to execute a deed, etc.

Section 23 provides for the foreclosure of "lands and tenements" by *scire facias.*

Section 24 provides for the redemption of mortgaged "lands" from the sales under a decree of foreclosure.

Sections 25 and 26 refer to writs of attachment upon "real estate."

Sections 27 and 28 refer to the recording of the certificates, and a sub-section added in 1853 provides that in all cases of redemption "of land" from any sale under a judgment or decree the party from whom the redemption takes place shall make out an instrument in writing evidencing said redemption, to be recorded in the recorder's office of the proper county in the same manner as other writings affecting the title to "real estate."

The remaining sections of the act refer to execution sales of goods and chattels (act of 1845, with amendments. See Gross Statutes, 1869).

It is apparent that the object of the act is to provide for the levying of executions upon all classes of property, real and personal. The words "land," "real estate" and "lands and tenements" are used throughout the act as meaning the same thing. They are intended to include all fixed or real property as compared with movable property, or "goods and chattels."

That a railroad is fixed or real property, and not "goods and chattels," seems to be a self-evident proposition. It is immaterial whether the roadbed be owned by the corporation in fee, or whether the corporation have merely a right of way upon the land. Rights of way and other easements have always been classed as "real estate."

Bouvier's Law Dic., Title "Real Estate."
Burrill's " " " " "

Appellant's title to the land constituting its road bed was in fee simple.

Section 10 of the charter of the Danville, Urbana, Bloomington and Pekin R. R. Co., under which appellant's road bed in Illinois was acquired, provides that "the right of way and real estate for the right of way and for the purpose aforesaid, purchased or acquired by said company, whether by agreement or otherwise, or which shall become the property of the company, shall, upon the payment of the money agreed or adjudged to be paid to the owner or owners of the same, as compensation for the same, become the property of said company in fee simple." (Private Law of Feb. 28, 1867).

Peoria and Rock Island R. R. Co. vs. Birkett, 62 Ill., 336.

The Supreme Court of Illinois has repeatedly decided that a railroad is "land" or "real estate" within the meaning of the common and statute law.

In Sangamon and Morgan R. R. Co. vs. County of Morgan, 14 Ill., 164, the Supreme Court held that a railroad must be treated as real property within the purview of tax laws applicable to "real property," "lands" and "lots," and that the portion of a railroad lying within a particular county must be taxed by itself in the same way as other lands within the county and without regard to the value of the road as a whole. Caton, J., delivering the opinion, said: "It was not controverted on the argument, that the railroad track is real property, within the meaning of the second section of that chapter, which says, 'the term real property, with respect to the assessment and collection of the revenue, shall be construed to include all lands within this State, and all

buildings and other things erected on or affixed to the same, and the terms 'land' and 'lots,' whenever they occur in this chapter, shall be construed as having the same meaning as 'real property.'"

In Palmer vs. Forbes, 23 Ill., 301, the Supreme Court decided that mortgages of real and personal property of railroad companies must be governed by the same rules of law as mortgages of real and personal property of individuals. Caton, C. J., delivering the opinion said: "Where the charter, or a general law of the State, authorizes a railroad company to mortgage either its real or personal estate, and provides no mode of execution or recording, and specifies no form for the instrument, and declares no effect which it shall have upon the rights of the parties or others, it would seem to follow, necessarily, that such mortgages must be subject to and governed by the general laws of the State, regulating mortgages; at least, so far as the general laws are applicable to the subject matter of the mortgage. As our laws applicable to mortgages of real and personal estate differ, the necessity of determining what is personal and what real estate is imposed upon us.

"That the railroad itself, including the ground and superstructure, as well as the depot grounds, buildings and turntables, and the like, *are real estate*, no doubt has ever been expressed, but it is denied that the rolling stock and other property, capable of being removed from the road without breaking the soil or leaving a trace of the removal, is to be treated as a part of the road itself, and pertaining to the real estate."

In Hunt vs. Bullock, 23 Ill., 320, it was decided that fuel, office furniture and other detached prop-

erty belonging to a railroad company was personalty, and could be mortgaged only by conforming strictly to the general statute regulating chattel mortgages. In reply to the argument that railroad property was of a peculiar character and should be exempted from the operation of the ordinary rules of law, for reasons of public policy, the court said: "Public policy requires Courts to declare the law as it is. They cannot wrest the law from what it now is in reference to similar contracts relating to any other subject matter."

See also Titus vs. Mabee, 25 Ill., 257.
Titus vs. Ginheimer, 27 Ill., 462.

The Supreme Court of Illinois holds that a railroad may redeem its real estate from tax sales the same as any other real estate may be redeemed.

Maus vs. Railroad, 27 Ill., 834.

The road-bed and station house are land, if black is black, and white is white; then, land is land. It is a refinement of reasoning that *defeats* the will of the Legislature to say that road-bed, station house and yards are not land. The State taxes them as lands, and whatever sophistries Courts may adopt, they can never make the people believe that land is not land. To declare that lands used by railroads are not lands under the Laws of Illinois, is to say that the Constitution and plain Statutes of Illinois are no part of a railroad company's contracts made in that State. It is not the law as made by the people in convention assembled, or by the people in General Assembly. It is "Judge Made Law," and should seldom be resorted to by Courts of Justice, who sit to explain and construe the law, and not to make it.

with the policy of the
law we ~~do not~~ have nothing
to do. Just. Harlan 103 US 212

V.

The Court erred in proceeding with the cause after bankruptcy of Turner Brothers had been shown; the assignee should have been made a party.

The original bill of complaint was filed in the Circuit Court of De Witt County and State of Illinois to the December Term, 1874. The Farmers' Loan and Trust Company filed its answer and original cross-bill in the month of February, 1875. The I., B. & W. Company filed a plea suggesting the bankruptcy of Turner Brothers March 30th, 1876, to the March Term of the De Witt Circuit Court, and also on the same day filed a transcript of the proceedings in bankruptcy against Turner Brothers from the District Court of the United States for the Southern District of New York, from which it appeared that the complainants in the original bill of complaint were adjudged bankrupts on the 13th day of July, 1875. The plea of the railroad company suggesting the bankruptcy set forth that John Castree, of New York City, had been appointed assignee of the estate of Turner Brothers; thereafter and on the 25th day of April, 1876, the Farmers' Loan and Trust Company filed its third amended bill in said cause, the 47th paragraph of which is as follows:

"Your orator further prays your Honor to permit this, its bill of "complaint, to be filed as a substitute for and in lieu of its original "cross-bill, in the case of Malcolm C. Turner *et al.* against the In- "dianapolis, Bloomington and Western Railway Company *et al.*, "now pending and undetermined in this honorable Court, and that "this, your orator's bill, be permitted to be filed and taken as an

to the debtor otherwise there was no cause of action

"amended and substituted bill instead of said original cross-bill and "the amendments thereto." (Transcript, 100.)

In the beginning of this pleading, and except in the last paragraph above recited, it is treated as an "amended cross-bill." It is not necessary for us, in the argument of this question, to attempt to distinguish between a pure cross-bill and an original bill in the nature of a cross-bill. It is sufficient to show to this Court that on the 25th day of April, 1876, nearly a month after the bankruptcy of the Turner Brothers had been suggested by a proper plea pleaded by the defendant railroad company and proven by a transcript of the proceedings in bankruptcy, and the order of their adjudication as bankrupts in the District Court of the United States for the Southern District of New York, it filed an amended cross-bill to be substituted in lieu of its original cross-bill and amendments thereto, and in which, for the first time, it sought to foreclose the three trust deeds therein referred to, on the ground that the principal of the bonds had become due after the commencement of the suit by reason of a default in the payment of the interest, and the operation of the contract between the parties. The case then stood precisely the same as if no proceedings had been taken by the Farmers' Loan and Trust Company, prior to the filing of this amended cross-bill, to which the Turner Brothers were made parties defendant. The original cross-bill was not pending after the leave was given to file the third amended cross-bill in lieu of it, and the third amended cross-bill could only affect the Turner Brothers as it found them at the date of its filing. The Farmers' Loan and Trust Company, at the date of the filing of this third amended cross-bill, was fully advised of the

To Dr. Just. Starlow 103 US 212

fact that the complainants in the original bill were civilly dead. Upon the adjudication of the Turner Brothers bankrupts by operation of law, they became divested of all their property and rights in and to the property. They ceased to have any interest in the subject matter of the original bill of complaint filed herein. The assignee was vested by operation of law with all their property and rights of action of every kind and nature whatsoever. The original third amended cross-bill *eo instanti* became defective for want of proper parties to prosecute it.

In the case of Sedgwick vs. Cleveland, 7 Paige, 287, the Court say:

"If this had been a case of an assignment by the "complainant under the Insolvent Acts, there could "have been no possible doubt that the suit had "abated, or rather that it had become so defective "that the complainant could not proceed any further "in his own name against the defendant if the lat-"ter had thought proper to raise the objection." (In the case at bar the defendant railroad company did raise the objection by a plea suggesting bankruptcy.) "If the complainant makes an assignment "of his property for the benefit of his creditors, the "assignee must be made a party before the suit can "be further proceeded in. Williams vs. Kinder, 4 "Vesey, 387."

In the case of Garr vs. Gomez, 9 Wendell, 649, it is stated that upon the bankruptcy of the complainant the case cannot proceed, if objected to by the defendant, until the assignees are brought before the Court; that while the suit is not strictly abated, it has become so defective that proceedings cannot be had therein until the assignee is

to the debtor otherwise there was no cause of action

brought before the Court by a bill of revivor. This rule is fully recognized and enforced in the English Courts.

In the case of Lee vs. Lee, 1 Hare Ch. R., 617, the Court decides that a case in which the plaintiff becomes a bankrupt after the commencement of the suit is analogous to one in which the plaintiff dies pending the suit, and says, p. 622 : "Bankruptcy, according to the practice in chancery, renders a suit defective, but does not cause an abatement. The bankrupt plaintiff, however, is placed under an incapacity (permanent or temporary as the case may be) to prosecute the suit, and by the non-prosecution of the suit for a given time the defendant acquires a right to dismiss the bill. In principle there seems to be no positive reason why this should not be done as against the bankrupt without notice to the assignees."

The principle upon which the Court proceeds is, that the moment the plaintiff becomes bankrupt, the Court cannot permit the case to proceed until after the substitution of the assignee, for the reason that he could enter no judgment or decree against the bankrupt that would be binding upon the assignee.

In the case of Herndon vs. Howard, 9 Wallace, 664, the Court says:

> "The section of the bankrupt law relied on, we think, governs "the present case. It seems to require that Masterson, the assignee, "be substituted as appellant for Herndon, the bankrupt, who may be "said to be *civiliter mortuus*, precisely as an executor or adminis- "trator would be made party instead of an appellant actually "deceased."

This case differs from that of Eyster vs. Gaff *et*

al., 91 U. S., 521. In the latter case the the bankrupt was made a party defendant to a proceeding to foreclose a mortgage prior to his adjudication in bankruptcy. The Court held that the proceeding to foreclose was not interrupted by such adjudication. The Court says: "The debtor of a bankrupt "or the man who contests the right to real or per- "sonal property with him, loses none of those "rights by the bankruptcy of his adversary." In such a case—that is, where the bankrupt was made party defendant before his adjudication—it is for the assignee to determine whether the estate has a sufficient interest in the defense for him to interpose and contest the claim of the plaintiff. If he fails to appear, the plaintiff has the right to proceed, and the effect is the same as if judgment or decree was taken by default, but not so in case the bankrupt is the plaintiff in the suit, and one of the defendants suggests the bankruptcy of the plaintiff by a proper plea and sufficient proof and a co-defendant subsequently files a cross-bill making such bankrupt complainant party defendant, omitting the assignee as a party defendant thereto.

The case now before the Court on the cross-bill was not instituted until after the adjudication in bankruptcy; until after the interest in the suit held by the complainants, Turner Brothers had vested in John Castree, and this was shown by the records of the Court. The Circuit Court proceeded to a decree against the Turner Brothers, and the cross bill was taken *pro confesso* against them.

Afterwards James Turner, one of the appellants, he having received his discharge in bankruptcy, purchased all the claims of the complainants in the original bill of complaint from the assignee

to the debtor otherwise there

in bankruptcy. This he had the right to do. It mattered not if he was one of the bankrupts or whether he had been discharged at the time he made the purchase or at the time he filed his petition herein. These claims were principally, if not entirely, secured by the trust deed to Thomas. Thomas avers, in his intervening petition (transcript, 23), that he never filed his answer to the cross-bill of the Farmers' Loan and Trust Company, or authorizod any person so to do for him, and that the interests of the *cestui que trust* represented by the trust deed to him, had never been adjudicated. His Honor, Judge Drummond, in considering the exceptions to the report of sale, in his opinion, 8th Bissell, p. 384, says:

"Inasmuch as the cross-bill of the Trust Company was filed for "the express purpose of determining the respective rights of the "parties before the Court, some of whom were Thomas, trustee of "the chattel mortgage, and the New York Company, the trustee "representing the bonds for which the mortgages on the main line "were given, it must be considered that when the Court adjudicated "upon that question and determined that the bondholders, under "their mortgage, had a prior and better right, that it also decided the "other question, although nothing is said in the decree as to the "rights of Thomas, the trustee of the chattel mortgage. * * * "That was the main question before the Court which was decided, "and of necessity the rights of Thomas, as trustee, were also ad "judicated. Therefore, the issues raised by the pleadings in the "original bill and cross-bill as to the claim of Thomas for the prior "lien were adjudicated."

His Honor, Judge Drummond, in his opinion, assumed a fact which the record does not disclose, viz., that the assignee had been made a party defendant to the cross-bill. In his opinion, 8 Bissell, *supra*, p. 3,931, he says.

"If the assignee choose to lie by and do nothing, although made a

"party, then all that can be said is that it is a mere irregularity in "entering the decree. Appearing there in court, made a party to "the proceeding in court, it was his right to take the necessary steps "to protect the interests of the bankrupts. If he did not choose to "do so, it certainly would be unjust that the rights of others should "be destroyed, or even impaired, because of his neglect."

The record in the case and the decree itself clearly disclosed the fact that the assignee did not appear; that he was not made a party defendant to the cross-bill of the Farmers' Loan and Trust Company, upon which proceedings to a decree were had. It may reasonably be assumed from the opinion of Judge Drummond that, if the assignee did not appear and was not made a party defendant to the cross-bill, then the complainant in the cross-bill would not have been entitled to a decree such as was entered in this case, and this was the fact. The assignee was a necessary party to the cross-bill. He was under no more obligation to voluntarily appear than any other necessary party is required to appear, unless he is made a party defendant.

The complainant takes the responsibility of determining who shall be parties defendant to his bill, and if, at any stage of the proceedings in the Court below or in the Court of Review, it is determined that a necessary party plaintiff or defendant is absent from the record, the Court will proceed no further and must undo what has been done.

These principles are fundamental, and require no authorities to support them. The authorities we have cited, English and American, emphatically declare that the law is, that when a plaintiff becomes bankrupt or assigns his property for the benefit of his creditors, pending a suit in which he is plaintiff, that such suit cannot proceed until the assignee has been brought in by a

to the debtor otherwise there

bill of revivor, and especially where the defendant objects to preceeding with the cause, as in the case at bar. If the original cause could not proceed until the assignee was substituted in the place of the complainants therein, the legal effect was the same as if the complainants had voluntarily dismissed their original bill.

It will be observed (supplemental transcript, p. 282) that this cause was removed from the State to the Federal Court and jurisdiction taken by the latter Court, May 30, 1876. No further proceedings were taken in the State Court after the filing of the plea suggesting bankruptcy, and the transcript of the proceedings in bankruptcy on the 30th day of March, 1876, and the filing of the third amended cross-bill by the Farmers' Loan and Trust Company on the 25th day of April, 1876. The order of the Circuit Court taking jurisdiction (transcript, 59) recites that "the said Turner Brothers and the Indianapolis, "Bloomington & Western Railway Company in no "wise appearing." The case then stood in the Federal Court with all the complainants in the original bill bankrupt.

No further proceedings could be had thereon under the law and practice in such cases until after the assignee had been brought in by proper procedure, and no proceeding could be had upon the cross bill of the Farmers' Loan and Trust Company so as to adjudicate and determine any controversy arising upon the subject matter of the original bill until the assignee had been made party defendant to such cross bill.

A pure cross bill seeks relief on the hearing of the original cause and by a decree thereon. Independently of a decree in the original cause no

relief can properly be sought by or obtained upon a pure cross bill.

The Courts of the United States never allow an original bill in the nature of a cross bill to be filed as a crosssuit, or for any other purpose than that for which a pure cross bill may be legitimately filed.

V.

When the original bill was dismissed the cross bill went with it. The suit ended.

The original cross bill filed in this case was for the purpose of obtaining relief against a co-defendant, and was an adjunct to the answer of the trustee to enable it on the final hearing of the original cause to obtain some relief which it supposed it could not have upon the answer alone.

The original bill was for the purpose of foreclosing the trust deeds and settling the relative rights of the different sets of bondholders and various creditors.

The original cross bill was for the same purpose, with the additional object in view to control the litigation as trustee of two of the trust deeds.

Except for the purpose of this control of the litigation or of the fund, the original bill and the original cross-bill were for precisely the same object, based upon the same grounds, except so far as the rights of the original complainants depended upon the security of the trust deed to Thomas. Upon the final hearing of the original cause a de-

fendant may, by cross-bill, seek affirmative relief against the complainant or against the complainant and a co-defendant, but such relief is limited to the controversy presented by the original bill. In cross-bills of this nature the relief sought must be such as necessarily results from the adjudication of the controversy involved upon the final hearing of the original cause. As a defendant cannot compel a complainant to bring the original cause to hearing upon the merits, and as the relief sought by cross-bill is entirely dependent upon and results from such a hearing, it necessarily follows that a cross-bill seeking relief against a complainant, or against a complainant, and a co-defendant, falls with the voluntary dismissal of the original bill or by its dismissal for want of prosecution.

The distinguishing feature of a cross-bill is that the relief is not sought from the facts alleged, but from an adjudication in the original cause by which those facts are conclusively established. A voluntary dismissal of an original bill or its dismissal for want of prosecution necessarily disposes of cross-bills of this nature, except as otherwise provided by statute.

The Supreme Court of the United States has clearly determined the cases in which a cross-bill may be filed. That Court has stated the nature and purposes of a cross-bill in the Courts of the United States, and repeatedly declared that a cross-bill will not be allowed for any other purpose.

In Ayres *et al.* vs. Carver *et al.*, 17 Howard, 594, the Court say:

"As it respects the cross bill it may be proper to observe that the "matters sought to be brought into the controversy between the com- "plainants in that and their co-defendants, do not seem to have any

" connection with the matters in controversy with the complainant in " the original bill; nor is it perceived that he has any interest or con- " cern in that controversy. These two complainants, in the cross " bill set up a title to the lands in dispute, which they insist is para- " mount to that of their co-defendants, and seek to obtain a decree " to that effect, and to have the possession delivered to them. This " is a litigation exclusively between these parties and with which the " complainant in the original bill should not be embarrassed or the " record encumbered. * * * The cross bill is brought by a " defendant in a suit against the plaintiff in the same suit or against " other defendants in the same suit, or against both, touching the " matters in question in the original bill. * * * It should not " introduce new and distinct matters not embraced in the original " bill, as they cannot be properly examined in that suit, but consti- " tute subject matter of an original, independent suit. The cross bill " is auxiliary to the proceeding in the original suit, and a dependency " upon it."

The Court will observe that the Farmers' Loan and and Trust Company in its third amended cross-bill avers that the complainants in the original bill of complaint are nominal parties—have, in fact, no interest in the controversy presented by such amended cross-bill. A cross bill is a mere auxiliary fall with the original

Cross vs. Devalle, 1 Wallace, 14.

In the case of Dows vs. The City of Chicago, 11 Wallace, p. 112, the Court say:

"The cross bill filed by the bank presents different features, * * * " and were it an original bill the jurisdiction of the Court might be " sustained on that ground, but as a cross bill it must follow the fate " of the original bill."

In *ex parte* Railroad Company, 95 ~~Otto~~ US, p. 225, the Court say:

" A cross bill must grow out of the matters alleged in the original " bill, and is used to bring the whole dispute before the Court, so " that there may be a complete decree touching the subject matter of " the action."

Elderkin vs. Fitch, 2 Carter, Ind., 90.

therefore in this case unmortgaged

"An original and a cross bill make but one suit."
Daniels Chancery Practice, Vol. 3, p. 1743.

Slason vs. Wright *et al.*, 14 Vt., p. 208, was a bill to foreclose a mortgage. A cross bill was filed. The original bill was dismissed. The Court say:

"This disposes of the whole case." "It is true that in England "cross-bills have sometimes been entertained in a different Court "from that in which the principal bill was filed. Story's Eq. Pl., "318. But in our practice the cross-bill has been considered a de- "pendency merely upon the principal bill. It is so considered in "the United States Courts. Eq. Pl. by Story, Ub. 1, *supra*. So "we think in the practice in chancery under our statutes, R. S. P., "848, where an answer or original bill is used as a cross-bill, also, "in cases requiring such a bill, the two together make but one suit, "and hence the dismissal of the original bill must carry with it out "of Court the appendage. * * * A plaintiff in chancery "has a right to dismiss his bill at his pleasure before final hearing "upon payment of costs if he is not in contempt."

Smith vs. Smith, 2 Blackf., 232.
Cockrell vs. Warner, 14 Ark., 346.
Randolph, 66 Penn. St., 178.
Adams Equity, 768.

These cases hold that an original and cross-bill make but one suit, and when the original is dismissed the dismissal carries with it the cross-bill. The same principle applies where an original bill cannot be prosecuted on the ground that the complainant is a bankrupt, and the assignee has not been brought in by a bill of revivor. The dismissal of the original bill carries with it the cross-bill. No proceedings can be had upon a cross-bill independent from a hearing on the original bill.

The original bill cannot be proceeded with in the absence of the assignee in bankruptcy of the complainant. The suggestion of bankruptcy of the complainants in the original bill by a plea of the defendant railroad company, and the evidence in support of that plea were before the Court.

It was no injustice for the Court not to proceed further, before the assignee was brought in by the Farmers' Loan and Trust Company. It was one of the defendants to the original bill It had the power to restore the jurisiction of the Court over the subject matter of the original bill by bringing the assignee in by a bill of revivor. It did not elect to do so. Until this was done a hearing of the original bill could not be had. Until a hearing of the original bill could be had no hearing could be had upon the cross bill.

VI

It was neither averred nor proven that the principal and interest of the bonds declared to be due by the Court had ever become due and payable according to the contract of the parties

The original bill of complaint was brought by bondholders and creditors of the Indianapolis, Bloomington and Western Railway Company. The complainants did not aver that the principal secured by the trust deeds had matured according to the terms of the bonds or the trust deeds securing the same, or by the declaration of the trustees according to the provisions of the trust deeds providing for the declaration of the maturity thereof.

The trust deeds made exhibits to the original bill showed upon their face that the bonds had many years to run before they became due.

The eighth article of the trus t deed dated October

1, 1869, to the Farmers' Loan and Trust Company (Exhibit B to original bill, transcript 22), is as follows:

"If default be made by the party of the first part in the payment "of any half year's interest on any of the said bonds, and the war- "rant or coupon for such interest shall have been presented and its "payment demanded, and such default shall have continued six "months after such demand, without the consent of the holders of "such coupon or bond, then and thereupon the principal of all the "said bonds hereby secured shall be and become immediately due "and payable, anything in said bonds to the contrary notwithstanding, "and the said party of the second part may so declare the same *and* "*notify the party of the first part thereof*, and upon the written request "of the holders of a majority of the said bonds then outstanding "shall proceed to collect both principal and interest of all such "bonds outstanding, by foreclosing and sale of said property or other- "wise as herein provided."

A like provision is contained in the other trust deeds foreclosed.

The Farmers' Loan and Trust Company, in its answer to the original bill of complaint and in its original cross-bill, does not pretend that default was made or continued without the consent of the holders "of such coupon or bond," and does not aver that such trustee did declare the principal of said bonds to be due and notified "the party of the first part thereof," or that, in interposing said answer and bringing such cross-bill, it proceeded "upon the written request of the holders of a majority of the said bonds."

The original cross-bill of the Farmers' Loan and Trust Company does not recite the eighth paragraph of the trust deed, above referred to but relies solely upon the provision, making it lawful upon default in payment of the interest for the trustee to enter, &c.

This provision does not authorize a foreclosure in

equity, but only an entry and sale under the power.

At the time the Farmers' Loan and Trust Company filed its original cross-bill it had not as such trustee declared the principal of the bonds to be due, and had not notified the Indianapolis, Bloomington and Western Railway Company of such declaration, and that it had not been requested by the written demand of the holders of a majority of said bonds to proceed to collect the same by foreclosure or otherwise as required by paragraph eight of the trust deeds.

In the third amended cross-bill, the Farmers' Loan and Trust Company, as to the trust deed executed to it as trustee to secure two thousand bonds, dated April 1, 1869, avers that default was made in payment of the interest, and had continued for more than six months, and "that on the 13th day of March, 1876, it was duly requested in writing by the holders of a large majority of said two thousand bonds to proceed to foreclose, &c."

That "by virtue of the said default in the payment and of the request as last aforesaid by virtue of the power vested in your orator," &c., "it has declared and does hereby declare the entire principal of said two thousand bonds to be now due and payable."

The original cross-bill was filed in February, 1875; the third amended cross-bill, containing the above averments, was filed on the 25th day of April, 1876. The averments recited conclude the fact that the demand in writing was not made before the 13th day of March, 1876, and that it was upon this demand in part that the Farmers' Loan and Trust Company declared the entire principal of the two thousand bonds to be due and payable; that there-

fore the trustee had not declared the principal due before the 13th day of March, 1876.

It is not averred in the cross-bill that the Indianapolis, Bloomington & Western Railway Company was notified of this declaration of the maturity of the principal of the bonds by its trustee at any time as required by the provision contained in the trust deed authorizing such declaration.

This notice to the railroad company was an essential prerequisite; without such notice the principal of the bonds had not become due.

The Farmers' Loan and Trust Company, as to the trust deed dated October 1st, 1869, executed by the I., B. & W. Company to it, to secure 5,000 bonds of $1,000 each, 3,000 of which were issued, avers in its third amended cross-bill, that default was made in the payment of interest, and says (transcript 94) paragraph "twenty-eight."

"Your orator would further show unto your Honor that demand "in writing was made on said trustee on the 13th day of March, "1876, by the holders of more than one-half of said 3,000 bonds to "proceed to foreclose said mortgage given to secure the same, and to "collect the entire principal and interest due upon said bonds by due "course of law; that by reason of such default and demand, said "trustee is advised by counsel learned in the law that the principal "of said entire 3,000 bonds, together with all the arrearage of in-"terest due thereon, is now due and payable, and that it is the right "and duty of said trustee to proceed to foreclose said indenture of "mortgage given to secure the same, and sell the said mortgaged "property for the payment and satisfaction thereof."

As to this trust deed, the Farmers' Loan and Trust Company did not aver that it had declared the principal of said bonds to be due, and had notified the I., B. & W. Company of such declaration, as required by the provision contained in paragraph eight

(Transcript 37) of the trust deed thus sought to be foreclosed. The averment is not that the trustee declared the principal to be due, but that it was advised by counsel that such was the fact, proceeding upon the ground that such declaration was not required on the part of the trustee in conformity with the provision contained in the trust deed in relation thereto.

The Farmers' Loan and Trust Company, in this third amended cross-bill, further seeks foreclosure of the trust deed executed by the I., B. & W. Company to Denison and Smith, dated October 1st, 1870, to secure 1,500 bonds of $1,000 each. As to this trust deed executed to Denison and Smith, the Farmers' Loan and Trust Company avers (Transcript 96) "thirty-sixth":

"Your orator would further show that in and by the eighth article "of said indenture last above described, it is, among other things, in "substance provided as follows: That if default shall be made in the "payment of any half year's interest on any of said bonds, and the "warrant or coupon for such interest should have been presented "and its payment demanded and said default should continue for "six months after such demand, without the consent of the holder "of such coupon or bond, then the principal of all said bonds secured "by said last mentioned indenture, should become immediately due "and payable, anything in said bonds to the contrary notwithstanding, and the said trustees shall so declare the same and notify the "said grantor thereof, and upon the written request of the holders of "a majority of the said bonds then outstanding, said trustee should "proceed to collect both principal and interest of all such outstanding bonds by foreclosure and sale of said property or otherwise, &c."

It is not averred that the trustees declared the principal of the bonds secured by this trust deed to be due, and notified the I., B. & W. Bk. Co. thereof. It is not averred that the suit to foreclose this trust deed was brought "upon the written request of the

"holders of a majority of the said bonds then out-
"standing."

As to the bonds secured by this trust deed, Blossom testifies (transcript 80) that "no demand was "made on Benjamin E. Smith and William Deni-"son, trustees of the deed of trust dated 1st of "October, 1870, to foreclose said deed of trust, by a "majority of the holders of said second mortgage "bonds, or, as far as I know, by any holders of said "bonds."

It is manifest that at the time the Farmers' Loan and Trust Company filed its original bill of complaint in this case the principal of these bonds was not due; that neither the original bill of complaint nor the original cross-bill was filed for the purpose of foreclosing these trust deeds for the interest alone; that by the original bill and cross-bill no case was presented to the Court which would authorize it to proceed to the foreclosure of these trust deeds, on the ground that the principal was due and payable. It had no jurisdiction of the subject matter of the principal of these bonds, and could take none. The Court could not adjudicate upon the principal of these bonds until after the same had matured, and such maturity must precede the commencement of the original suit to enforce payment, whether by an action at law upon the bonds or a proceeding to foreclose their security.

It cannot reasonably be contended that the pleadings consisting of the original bill of complaint, the original cross-bill of the Farmers' Loan and Trust Company, and the answers thereto, could have sustained a decree of foreclosure of the trusts deeds therein mentioned and a sale of the property thereunder.

Neither the complainants in the original bill nor the Farmers' Loan and Trust Company in its original cross-bill averred or pretended that the principal of these bonds was due. That issue was not before the Court. The question was not submitted by the pleadings for judicial determination. The principal of the debt upon the face of the bonds and trust deeds had years to run. And without the averments that the maturity had been accelerated by an exercise of the powers conferred upon the trustee and bondholders contained in Article 8 of the trust deeds, the Court had no ground upon which to proceed with the foreclosure of these trust deeds.

In the case of Chicago, Danville & Vincennes Railroad Company *et al.* against Fosdick *et al.* (October Term, 1881), this Court, in the construction of like provisions contained in the trust deed, involved in that case, says :

> " It is true that where a mortgage has been given to secure a debt " payable in installments, and a bill has been filed for foreclosure " and sale, upon a default as to one, the Court may require payment " of all installments then due, though matured since the institution " of the suit; but that principle does not suffice to bring the case of " the appellees within the meaning of the 8th article of the condi- " tions of the mortgage so as to justify the decree requiring the pay- " ment or the principal of the debt as presently due. For by the " terms of that provision the entire debt does not become absolutely " due on the default of the company continued for six months with " out the consent of the holder to pay an interest coupon, *but only at* " *the election of the trustees as declared by them and notified to the mort-* " *gagor,* and the forfeiture of the time of payment to be established " in a given case *must stand or fall upon the effect of such declaration* " *and notice,* as it may be justified or not by the circumstances exist- " ing when they were made. *It cannot be supported by subsequent oc-* " *currences.*"

This decision decides clearly and emphatically that

therefore in the case mentioned

a case for foreclosure must exist at the time of the commencement of the suit, and "cannot be sup- "ported by subsequent occurrences"—that is, decla rations of maturity or written requests on the part of a majority of the bondholders made to the trustee after the filing of the original bill and original cross-bill; that the trustee must not only declare the principal due, but that such declaration must be by the trustee "notified to the mortgagor." This Court further says in the case above cited:

"The eighth article of the conditions of the mortgage, which re- "lates to this mortgage, contains the provision that after the princi- "pal of the bond has been declared by the trustees to have become "due by reason of the default therein described, and the mortgagor "notified thereof, that the trustees, 'upon the written request of the "'holders of a majority of the said bonds then outstanding, shall "'proceed to collect both principal and interest of all such bonds "'then outstanding, by a foreclosure or sale of said property, or "'otherwise, as herein provided.' It is contended on behalf of the "appellees that without the last clause the trustees have the sole "right to act according to their discretion, and upon their own mo- "tion, in declaring the principal sum due on account of the default, "and that upon such declaration and notice by the trustees the whole "sum becomes due and payable for all the purposes of the mort- "gage, so that thereafter the trustees, at their option, may file a bill "for foreclosure and sale, or may intervene," &c.

"We cannot agree to that construction of the provision. The "whole article must be taken together. *It is in fact a unit and is di- "rected to a single end*, and the nature of the provision, and the charac- "ter of its objects must be taken into consideration, as furnishing "the rule of its interpretation. * * * It is, therefore, our "opinion that even had the trustees rightfully declared the principal "sum of the mortgage debt due, and given the proper notice thereof, "nevertheless the foundation for proceeding to foreclose for that "cause, and of the decree requiring the payment of that amount, "would fail, without proof that the bill had been filed for that pur- "pose, upon the written request of the holders of a majority of the "bonds then outstanding. It is not disputed that no such proof is "to be found in the record."

Thus, this Court decides that even if the trustee had declared the principal due, and had notified the mortgagor, it would not be authorized to proceed to foreclose, except upon the written request of the holders of a majority of the bonds. In the case at bar, the mortgagor was not notified of any attempt on the part of the trustee or the holders of a majority of the the bonds to declare the principal sum due. Such notification is not averred, and no proof of such notice attempted.

No declaration on the part of the trustee is averred as to 3,000 bonds. The trustee simply avers in its third amended cross-bill that it is advised by counsel that the principal became due by reason of a default in the payment of the interest, and upon a written request of the holders of a majority of the bonds for it to proceed to foreclose. As to the trust deed to Denison and Smith, which is foreclosed in this proceeding, it is not averred that the trustees declared the maturity of the principal, or that any of the holders of the bonds attempted to declare the maturity of the principal, or that the holder of a majority of the bonds, or the holders of any bonds, requested the trustees or any other person to proceed to foreclose the mortgage.

Notice to the I., B. & W. Company of the declaration of the maturity of the principal was absolutely essential before the trustee could proceed to foreclose, even upon the written request of a sufficient number of bondholders. It is so "nominated" in the trust deed. Without such notice it could not know that a proceeding to collect the principal of the bonds by foreclosure of the trust deeds securing the same had been, or could be instituted.

It does not appear in proof that any demand was

ever made upon the mortgagor for the payment of the coupons falling due prior to the filing of the original bill of complaint in this case.

Blossom is asked if he knows that default has been made in the payment of interest coupons on these three series of bonds, and he says (transcript 179):

"I know it by ownership of many of the defaulting coupons which "I caused to be presented for payment which were not paid," &c. The witness is further asked, "Who owns or controls said outstand- "ing bonds, or a majority of them, if anyone, and how long has "such party or parties so controlled the same?" To which he answers, "Majorities of each of said series of bonds are controlled "by Austin Corbin, Giles E. Tainter, and myself, the duly ap- "pointed foreclosure committee, and have been so controlled from "and since about the month of March, 1876," &c.

Austin Corbin and Giles E. Tainter testify to the same effect. It is not stated in the evidence of these witnesses, nor does it appear from any other testimony in this case that a demand was made upon the mortgagor for the payment of interest prior to the month of March, 1876. The dates of the notarial protests referred to by witnesses are not given, and the presumption must arise that such demand was not made before Blossom came into the control of the bonds. When he was asked how he knew that default had been made in the payment of the interest, he states: "I know it by ownership "of many of the defaulted bonds which I caused to "be presented for payment," and thus fixes his control over such bonds at the date "from and since "about the month of March, 1876." It thus appears that long after the original cross-bill had been filed by the trustee, long after it had been amended the first time, these bonds came into the possession of

Corbin, Blossom and Tainter, to wit., about the month of March, 1876; that they immediately presented these bonds to the mortgagor, demanded payment thereof, and then immediately proceeded to request in writing the Farmers' Loan and Trust Company, as Trustee, to proceed with the foreclosure, which request in writing was dated March 16th, 1876.

It will be observed that all the pleadings, and the evidence of Blossom, Tainter and Corbin, show that the interest due on the bonds of the Danville, Urbana, Bloomington and Pekin Railroad Company, October 1st, 1874, and on the first mortgage bonds of the I., B. & W. Company, due October 1st, 1874, and on the second mortgage bonds of the I., B. & W. Company, due July 1st, 1874, was in default. The original bill of complaint in this case was filed in the month of November, 1874, in the Circuit Court of De Witt County, State of Illinois, to the December Term, 1874. Thus the default in the payment of interest had not continued for six months from and after the maturity of such interest at the date of the commencement of this suit. All the interest maturing prior to July and October 1st, 1874, had been paid.

In the Danville case, *supra*, this Court says:

> " It is averred in the petition that the coupons were presented and
> " payment demanded in September, 1874, which had become due
> " the previous April, and the Master so reports as to one, but the
> " only evidence that appears in the record is a demand of the rail-
> " road company in the sixth exception to the Master's report,
> " where it is accompanied by the statement that such demand and
> " refusal was less than six months before the filing of the bill, and
> " could not, therefore, have been the foundation of the declaration
> " that the principal of the mortgage debt had become payable," &c.

It is evident that, at the commencement of this

therefore in this case the mortgage

suit, the principal of the bonds was not due by the terms thereof, and that the maturity of the same could not have been declared by the trustee, and did not become so, and could not have been made so under any provision contained in the trust deeds.

January 30th, 1875, the Farmers' Loan and Trust Company filed its answer to the original bill of complaint and its original cross-bill in this cause. At that date payment of the interest due on the second mortgage bonds of the I., B. & W. Company, July 1st, 1874, was in default for more than six months, but the default in the payment of the interest falling due on the other two series of bonds, October 1st, 1874, had not continued for six months at the date the Farmers' Loan and Trust Company filed its answer and original cross-bill; therefore, as to these two series of bonds, at the time the Farmers' Loan and Trust Company presented its first affirmative pleadings seeking to foreclose the trust deeds to secure these bonds, the principal was not due, and its maturity could not have been accelerated by the declaration of the trustee or the acts of the bondholders, or under or by virtue of any provision contained in the trust deeds, because the default had not continued six months.

As to the series of bonds upon which the interest matured July 1st, 1874, the holders thereof have taken no action in the premises, and no request was ever made upon the trustees to prosecute the foreclosure of the trust deed securing the same. It follows, therefore, that at the time the Farmers' Loan and Trust Company brought its original cross-bill the principal of the bonds secured by the trust deeds sought to be foreclosed, was not due, and could not be made due. In the Danville case, *supra*, this

Court says: "It is true that after the filing of the "bill and the appointment of receiver, the railroad "company ceased to pay interest upon its securi- "ties. This was but the natural consequence of the "litigation."

It is clear that this Court, in the Danville case, would not recognize the right of the trustee to declare the maturity of the principal after the commencement of the suit and appointment of a Receiver, although default should be made in the payment of subsequent instalments of interest. By the terms of the contract between the parties, no proceedings could be instituted to foreclose the trust deeds of the principal until after the default in the payment of the interest had continued for six months, without the consent of the holder of the bonds, and then not until after the trustee had declared the principal due and notified the mortgagor of this declaration, and had received a written request from a holder of a majority of the bonds to proceed to collect the principal by foreclosure or otherwise.

These six months must fully lapse, and the conditions stated in article eighth of the trust deed must be fully performed by the trustees and bondholders before a suit could be instituted to foreclose the trust deeds.

Perry on Trusts § 783
Shelden vs Robinson 97 U.S. 178

It is not a part of the business of Courts of Equity to enforce penalties, or to be more exacting with delinquent debtors than creditors themselves are.

No pleading prior to the amended cross-bill tendered an issue involving the maturity of the principal of the bonds, under the original bill and original cross-bill; the Court could not have decreed the

therefore in this case the mortgagor

foreclosure and sale of the property for the payment of the principal of the bonds. It is clear, therefore, that the third amended cross-bill is a departure from the original cross-bill, and sets up a different ground upon which to proceed to the foreclosure of the mortgages from that charged in the original bill and the original cross-bill.

In the case of Shields vs. Barrows (17 Howard, 144), the Court says:

> "Nor is the complainant at liberty to abandon the entire case "made by his bill and make a new and different case by way of "amendment. * * * Under the privilege of amending, "the party is not permitted to make a new bill. Amendments can "only be allowed when the bill is found defective in proper parties, "in its prayer for relief, or in the omission or mistake of some fact "or circumstance connected with the substance of the case, but not "forming the substance of the case itself."

In the Danville case, *supra*, this Court holds that the cause of action must exist; that is, the maturity of the principal of the bonds must have occurred through a strict compliance with the provision of the trust deed, under which the maturity may be accelerated in case of default in payment of the interest, and its continuance for six months, before the trustee is entitled to bring suit to foreclose. Otherwise the Court would entertain a suit without a controversy, a cause without an issue.

It is clear that the Court could not hold the mere form of action instituted without an issue to judicially determine until the maturity of the principal of the bonds occurred, according to the tenor and effect of the bonds, or by reason of a default in the payment of the interest, continuing for six months, and a compliance with Article 8 of the trust deed, on the part

of the trustee and the bondholders, and then permit a real suit to be instituted by way of an amendment to the original pleadings.

The cause at bar stands precisely as if the Farmers' Loan and Trust Company had stated in express language in its original cross-bill that the I., B. & W. Company was not indebted in any amount upon bonds secured by these trust deeds. But, nevertheless, it desired a decree of foreclosure and sale against the property of the railroad company upon the face of the original pleadings and the exhibits thereto attached, or desired the Court to hold the same until the company should become indebted to the plaintiffs.

It clearly appears by the averments of the pleaders and the facts contained in the exhibits—the trust deeds—that the principal of the 2,000 bonds, the principal of the 3,000 bonds, and the principal of the 1,500 bonds were not due, and that although the holders of such bonds might be entitled to enforce the payment thereof in law, the trustee was not entitled to enforce the payment thereof in equity by a foreclosure of the trust deeds. This Court will observe that the decree was obtained without contest. The cross-bill was taken *pro confesso* against the I., B. & W. Company. The railroad company not answering, could not give the Court jurisdiction to adjudicate and determine either in favor of the railroad company or against it, a fact that did not exist at the time of the filing of the original bill of complaint.

It was the duty of the Farmers' Loan and Trust Company as trustee, first for the bondholders and second for the railroad company, to have procured the dismissal of the original

therefore in this case the mortgage of

bill of complaint, if it desired to proceed with a foreclosure of the trust deeds, and sale of the property thereunder, and then have awaited the ripening of the default in the payment of the interest into an absolute maturity of the principal, in accordance with the provisions contained in Article 8 of the trust deeds.

We have said that the third amended cross-bill presented a new case; that the original bill and original cross-bill did not deal with the principal of the bonds or assume that such principal was due or proceed upon that ground for foreclosure, but upon the simple ground that the railroad company was insolvent. A careful examination of these pleadings clearly supports this assertion.

Adams, Equity, p. 769, note 3, says: "A cross-bill "is a matter of defense; it cannot introduce new "and distinct matter not embraced in the original "suit, and if it does so, no decree can be founded "on those matters;" and cites:

Galatin vs. Erwin, Hopk., 48; S. C., 8; Cowen, 361.
May vs. Armstrong, 3 J. J. Marsh, 262.
Daniel vs. Morrison's Exrs., 6 Dana, 186.
Fletcher vs. Wilson, 1 S. & M. Ch., 376.
Draper vs. Gordon, 4 Sandf. Ch., 210.
Josey vs. Rogers, 13 Ga., 478.
Slosson vs. Wright, 14 Verm., 208.
Reitland vs. Page, 24 id., 181.
Cross vs. De Valle, 1 Wall., 14.
Hurd vs. Case, 32 Ill., 45.
Homer vs. Hanks., 22 Ark., 572.

VII.

The Circuit erred in ordering the personal property covered by the chattel mortgage executed to Thomas to be sold and delivered to the purchasers without regard to the rights of the creditors secured by said mortgage.

The original will filed by Turner Brothers shows that a chattel mortgage covering the entire personal estate of the I., B. & W. R. R. Co. was executed by said company to Thomas on the 16th day of November, 1874, to secure a large number of creditors. The schedule attached to the mortgage and made a part of the bill of Turner Brothers, as Exhibit G, shows that Turner Brothers held claims to the amount of more than $400,000.

The bill avers that the chattel mortgage is a first lien on the personal property of the company, and asks that it may be foreclosed for the benefit of the creditors secured thereby.

The Farmers' Loan and Trust Company, in its answer and cross-bill, admits the execution of the chattel mortgage, but charges that it was vitiated by fraud at its inception, and, furthermore, denies that it is entitled to priority over the mortgages previously executed by the railroad company to secure its bondholders.

No evidence was introduced to establish any of the charges of fraud, and they may therefore be dismissed without further consideration.

Thomas, the trustee of the chattel mortgage, set up the execution of this mortgage and the rights of the creditors secured thereby in his joint answer and cross-bill with Benj. E. Smith, but no further steps were taken by him to obtain its foreclosure.

On the 30th day of March, 1876, the bankruptcy

of Turner Brothers was suggested to the Court, and evidence was at the same time introduced showing the appointment of John Castree, as assignee in bankruptcy, to take charge of the bankrupt's estate. The assignee was never made a party to the suit. On the 18th day of July, 1877, the Circuit Court rendered its decree ordering the entire property of the railroad company to be sold for the benefit of the bondholders represented by the Farmers' Loan and Trust Company as trustee.

After the sale under the decree, but before its confirmation by the Court, James Turner again became a party to the suit, by filing his petition for leave to intervene. He again set up his chattel mortgage, and showed that he had become entitled to all the rights originally possessed by Turner Brothers, under the chattel mortgage, by purchase from the assignee in bankruptcy. He further filed exceptions to the Master's sale, but these exceptions were overruled by the Court, and a deed was subsequently executed to the purchasers.

The mortgages foreclosed by the Farmers' Loan and Trust Company were executed as real estate mortgages; they were never executed and recorded as chattel mortgages in the manner prescribed by the laws of Illinois; and they were of no validity as chattel mortgages under the express decisions of the Supreme Court of that State.

In Hunt vs. Bullock (23 Ill., 320 [1860]), the Supreme Court of Illinois held that railroad companies could mortgage their personal property only by conforming strictly to the general laws regulating the execution and recording of chattel mortgages. Walker, J., delivering the opinion, said: "It is urged that railroad companies, in executing mortgages or deeds of trust on chattels, are not required

to conform to the chapter regulating chattel mortgages; and, for that reason, it is insisted that the decree in this case should be reversed. The deeds of trust were executed by the company to secure the loan of several sums of money for which they had executed bonds, but the company failed to acknowledge these instruments before a Justice of the Peace in the Justice's district in which they had their principal office or place of business, nor was any memorandum of the same, with a list of the articles of property embraced in the deeds entered upon his docket, as required by that Act. This the statute expressly requires to render such instruments valid, and the 29th sec. of ch. 90, R. S., has expressly provided that incorporated companies shall be embraced in the general enactments of the State. And this provision has been held to apply to railroad companies created after the adoption of the revision of 1845, and is manifestly in accordance with the legislative intention. *Mineral Point Railroad Co. vs. Keep*, 22 Ill. R., 9. These deeds not having been executed and acknowledged, and no memorandum or list of the articles pledged having been made according to the requirements of the statute, there was such a failure to comply with the law, as would render such instruments, if executed by an individual, void as to third parties, and such must be the effect in this case."

The decree of the Court in the case now under consideration provides that the "tools and implements owned or provided to be used therein and in constructing and repairing cars and machinery for said road or the track and superstructure aforesaid" and "all supplies and other things provided by the

company or by the receiver thereof, to be used in operating said road shall be sold to satisfy the bondholders secured by the trust deeds executed by the Farmers' Loan & Trust Company (Transcript, p. 194).

Tools, implements and supplies are clearly personal property, and, at the date of the execution of the trust deeds of the Farmers' Loan & Trust Company, could be mortgaged only by complying with the statutes relating to chattel mortgages.

Hunt vs. Bullock, 23 Ill., 320.
Palmer vs. Forbes, 23 Ill., 301.
Titus vs. Mabee, 25 Ill., 257.

It is well settled law in the State of Illinois that a chattel mortgage which was not executed and recorded in the manner prescribed by statute is absolutely void as to subsequent purchases or junior mortgages even though they took with notice of the prior mortgage.

Forest vs. Tinkham, 29 Ill., 141.
Sage vs. Browning, 51 Ill., 217.
Porter vs. Dement, 35 Ill., 478.
Frank vs. Miner, 50 Ill., 444.

It follows, therefore, according to the express decisions of the Supreme Court of Illinois expounding the law as it stood when the mortgages to the Farmers' Loan and Trust Company were executed, that these mortgages were not a valid lien upon the "tools" and "implements" and "supplies" of the I., B. & W. R. R. Company; and that the creditors secured by the chattel mortgage to Thomas were entitled to priority.

The mortgages foreclosed at the suit of the Farmers' Loan and Trust Company, viz., one to the Danville, Urbanna, Bloomington and Pekin R. R.

Co. for $2,000,000, dated April 1, 1869 ("Exhibit A"), and one to the I., B. & W. Ry. Co. for $3,000,000, dated Oct. 1st, 1869, were executed before the adoption of the Constitution of 1870 by the State of Illinois. The mortgage executed to Dennison and Smith, trustees (Exhibit D"), to secure the issue of bonds to the amount of $1,500,000 was executed after the adoption of the Constitution, viz., October 1st, 1870.

Article XI., § 10, of the Constitution of 1870 is as follows:

"The rolling stock, and all other movable property belonging to any railway company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting any such property from execution and sale."

A very large portion, nearly all, of the rolling stock of the I., B. & W. R. R. Co. was acquired after the Constitution of 1870 went into effect. The railroad itself was mostly built after 1870. The debts secured by the chattel mortgage were in part incurred during the years 1873 and 1874 for locomotives, cars and supplies used in the operation of the railroad. (Transcript, 211, 214.) The indebtedness to foreclose which, purporting to be secured by the chattel mortgage, was in all respects as meritorious as the bonded debt secured by mortgage to the Farmers' Loan and Trust Company.

Appellant claims that all the rolling stock and other movable property belonging to the railroad company must be treated as personal property after the adoption of the Constitution of 1870. The Constitution expressly declares it shall be considered

therefore in this case the mortgage of

personal property, and the Courts cannot rightfully disregard this provision.

Equipment and supplies acquired by the railroad company after the adoption of the Constitution of 1870 never became a portion of the realty. The lien of the real estate mortgages could, therefore, never attach to it. No contract or vested right was thus impaired. The legal character of personal property acquired by the railroad company was determined before it became the purchaser of it. After the adoption of the Constitution the company acquired no equipment or supplies to which the lien of the prior real estate mortgages could attach.

Movable property acquired by the railroad company before the adoption of the Constitution could be held under the existing mortgages only by complying with the statutes relating to mortgages of personal property. After the adoption of the Constitution, the movable property of the company must be considered "personal property," and, being personal property, it could not be mortgaged except in the manner prescribed by law. If the Court differs with counsel in this construction, it does not seem possible that the Court can say that a mortgage of real estate on a railroad with its equipment and supplies made after the adoption of the Constitution in 1870—which highest law of the land became a part of every contract—could be effective and valid, except as it complied with the Constitution and laws.

It is not contended by counsel for the appellee that the mortgages of the Farmers' Loan & Trust Company were executed as chattel mortgages either before or after the adoption of the Constitution of 1870. The mortgage to Dennison & Smith was

executed after the Constitution of 1870 was adopted, and is, therefore, clearly subject thereto. The decree of the Circuit Court, ordering a sale of the entire rolling stock and other personal property of the I., B. & W. R. R. Co., to satisfy the bondholders secured by these mortgages, was, therefore, erroneous.

The original company, the one which made the mortgage (Exhibit A), was defunct, it could not or did not acquire any property to be covered by its mortgage of April 1st, 1869.

Its successor, the I., B. & W. R. R. Co., could not purchase new property, railway equipment, &c., and claim that a mortgage made by its predecessor lapped over this additional personal property.

All property purchased and put upon the railroad after the Constitution of Illinois was adopted, the purchaser not having mortgaged it under previously existing laws, was personal property and not mortgaged, except by the chattel mortgage. "Exhibit C."

This being so, the decree appealed from is erroneous in this, that it directed the sale of a large amount of property not embraced in the mortgage.

VIII.

The Court erred in overruling appellant's exceptions to the Master's report of the sale, and in confirming the sale.

The order of the Court confirming the sale of the entire property of the I., B. & W. R. R. Co., and

ordering the Master to execute a deed and deliver the property to the purchasers, reaffirms each and all of the prior proceedings of the Court. It was, therefore, erroneous, for all of the reasons above set forth.

If the Circuit Court had no jurisdiction over the parties or the subject-matter, it had no power to enter the decree of foreclosure and sale; and without such power the order confirming the sale was absolutely void.

The want of jurisdiction vitiates the entire proceedings from beginning to end.

It has been shown that the amendment of the decree at the January Term, 1877, was unauthorized and absolutely void, because made after the term of Court at which the original decree was rendered. The sale was made under the amended decree. It was, therefore, made under a decree which had no legal force or validity, and the order confirming such unauthorized sale was clearly erroneous.

In the Danville case, *supra*, this Court says: "It is obvious that the finding of the amount due, for non-payment of which, according to the terms of the decree, the mortgaged property is ordered to be sold, is the foundation of the right of the mortgagee to further proceed. And a substantial error in that finding must on appeal vitiate all subsequent proceedings. Unlike a calculable error in the amount of a personal judgment which may be cured by a remittitur, it is otherwise incurable; for as it is an illegal exaction made as a condition for preserving the rights of the mortgagee in his tender, and, if executed, depriving him wrongfully of them, it propagates itself through all subsequent stages of the cause. * * * * The same consequences

undoubtedly would have followed if it had been a decree of foreclosure and sale instead of a strict foreclosure, and the error is as vital where a larger amount than is actually due is ordered to be paid as where there is a failure to find what amount is due."

Under this decision of this Court, suppose the Circuit Court had not found in its decree any amount due from the mortgagor to the bondholders or trustee, could a sale have occurred under such decree.

If a sale had been made under such decree, would not the order of confirmation have been void? In determining that such an order confirming a sale under such decree was void, would not the court of review be compelled to look into the decree of foreclosure and sale for the purpose of determining the question whether any amount had been found due or not?

This Court decides that a decree finding a greater sum due than the sum of the matured debt is the same as if no amount had been found due. In either case the decree cannot be executed by a sale of the property thereunder.

If the decree found any amount due that fact could be ascertained by an examination of the decree; but to determine whether the decree finds a greater sum due than the matured debt the Court must examine the pleadings on evidence.

A defendant is not required to enter an appearance and defend against the enforcement of an honest debt to the extent of the sum actually due the plaintiff.

He is not required to follow the proceedings. The

presumption is that the plaintiff will not claim a decree for an undue sum or for more than the defendant owes. The plaintiff takes the risk of having the entire proceedings vitiated if he proceeds to sale under the decree of foreclosure for an amount found in the decree which was not due at the commencement of the suit or at the time of the entry of the decree, if the principal of the debt fell due in instalments, which is not the case at bar.

This is not a case in which part of the principal of the various series of bonds had matured before the commencement of the suit, and another instalment of the principal had become due after the commencement of the suit and before the entry of the decree.

In the Danville case, *supra*, this Court distinguishes between these two classes of cases, the one at bar and the one last above supposed. In this case no part of the principal was due at the time of the commencement of the suit, nor did it fall due according to the terms and tenor of the bonds before the entry of the decree, nor was the maturity of the principal accelerated in accordance with the provisions contained in the trust deed providing therefor.

In the Danville case, *supra*, the Court say: "It "becomes, then, of the first importance to ascertain "whether the decree of foreclosure and sale in the "present case does charge and require to be paid as "the condition of exercising the right to redeem, a "larger sum than was then due."

We contend that the Court did not have and could not acquire jurisdiction over the unmatured principal of these bonds:

In the case of the Chicago, Danville and Vincennes Railroad Company *et al.* vs. Fosdick *et al.*, decided at the October Term, 1881, this Court, in considering the effect of an appeal from an order confirming a sale in the execution of the decree of foreclosure and sale, say: "But the decrees in- "volved in this appeal now to be considered depend "upon the decree of foreclosure and sale, and, the "latter having been reversed, the decrees in ques- "tion are left without support and fall of them- "selves by reason of that reversal vitiated by the "common error."

Therefore the finding of an amount in the decree of foreclosure and sale not due, and the confirming of a sale for the satisfaction of such an excessive amount, constitutes an error common to both decree and order of confirmation. The order confirming the sale depends upon the decree, and in the consideration of this error they cannot be separately considered. That which vitiates the one makes nugatory the other.

In the last opinion rendered by this Court in the Danville case, *supra*, the Court say:

"For the reason announced, it is, therefore, "ordered, that the appeal from the decrees of April "12, 1877, and of December 16, 1877, respectively, "be dismissed upon the ground that the decrees "were vacated by the reversal of the prior decree "of foreclosure and sale rendered December 5, "1876."

Thus this Court decides that the reversal of the decree on the ground that a greater sum was found to be due and had matured at the commencement of this suit was a reversal of the decree of the confirmation

of the sale made to pay such excessive sums, and therefore dismissed the appeal from the order of confirmation. This decision of the Court is based upon the fact that the error was common to the decree of foreclosure and sale and the order of confirmation.

GEO. W. KRETZINGER,
N. A. COWDREY,
Counsel for Appellants.

9th

The Court should remand the case with direction to the Circuit Ct. to remand it to the State Ct & to proceed no further for want of jurisdiction

OFFICE SUPREME COURT
FILED

FILED
DEC 4 1882

EVENING POST JOB PRINTING OFFICE, 208 B'way, N. Y.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1882.

JAMES TURNER ET AL.,
Appellants,

vs.

THE FARMERS' LOAN AND TRUST COMPANY ET AL.

No. 120.

Appeal from the Circuit Court of the United States, Southern District of Illinois.

Statement and Brief of Argument on behalf of the Appellees.

JAMES D. CAMPBELL, *of Counsel.*

STATEMENT.

The transcript filed here by the appellants only purports to contain copies of some of the papers remaining amongst the files of the court below, including some of the more important orders and decrees entered during the progress of the case.

Pursuant to stipulation, the appellant has also filed copies of still other papers from the files.

By virtue of the same stipulation, parties are permitted to refer also to the record in No. 1,212 of the present term, which will, in some respects, serve to supply the manifold deficiencies of the transcript.

November 18, 1874, Malcolm C. Turner and others, composing the firm of Turner Bros., representing themselves to be bondholders and creditors of the Indianapolis, Bloomington and Western Railway Company, suing on behalf of themselves and all other bondholders and creditors of that company, filed their bill in the Circuit Court of Montgomery County, Indiana (Record, 1212, p. 1), making defendants the railway company, also, The Farmers' Loan and Trust Company, William Dennison, Benjamin E. Smith, Robert Turner and Joseph T. Thomas, the latter appearing by the averments of the bill to be the trustees in the several outstanding mortgages or deeds of trust, which will be later on called to the attention of the court.

On the same day, without service of process, and without other notice to any of the trustees, the complainants, by their solicitor, and the railroad company by its solicitors, appeared (Record, 1212, p. 71) and procured the appointment of a Receiver.

Three days afterwards, Nov. 21, 1874, the same bill was filed and order entered in the Circuit Court of DeWitt County, Illinois (Record, 1212, p. 71).

The Bill of Complaint is contained in the present record (Record, 2).

Having procured the appointment of the Receiver by the voluntary appearance and consent of the railway company, the complainants took no further proceedings in the suit, not having even taken steps to cause process to be served upon the several trustees named as defendants.

The allegations of this bill (Record, 2) disclose the following facts, which are undisputed, and are substantially reiterated by all the parties in the course of the subsequent proceedings.

1. Prior to July 12, 1869, there was a railroad corporation organized under the laws of Indiana, called the Indianapolis, Crawfordsville and Danville Railroad Company, which had outstanding at that time $1,500,000 of coupon bonds, secured by mortgage upon its railroad and franchises.

2. Prior to April 1, 1869, there existed a corporation organized under the laws of Illinois, called the Danville, Urbana, Bloomington and Pekin Railroad Company, which had at that date outstanding $2,000,000 of coupon bonds, secured by mortgage upon its railroad, equipment and franchises to the Farmers' Loan and Trust Company of New York, as trustee (Record, 3).

3. July 12, 1869, these two corporations, in conformity to the laws of Indiana and Illinois, became consolidated and merged into one corporation, under the name of the Indianapolis, Bloomington and Western Railway Company (Record, 4).

4. October 1, 1869, the consolidated company made a mortgage, also to the Farmers' Loan and Trust Company, upon its entire property to secure a proposed issue of consolidated bonds amounting to $5,000,000, of which $2,000,000 were to be used to take up the outstanding issue of the Illinois company, $1,500,000 to take up the outstanding issue of the Indiana company, and the remaining $1,500,000 were to be issued and sold for the general purposes of the company. Of these bonds only $3,000,000 were issued, the holders of the bonds issued by the Illinois Company having refused to convert their bonds (Record, 5).

5. Later, October 1, 1870, a new issue of bonds was made amounting to $1,500,000, secured by a second mortgage to Benjamin E. Smith and William Dennison, as trustees. Dennison afterwards resigned from this trust, and Joseph T. Thomas was duly substituted in his stead.

6. June 28, 1872, the Indianapolis, Bloomington and Western Railway Company acquired, by purchase, the

property and franchises of the Havana, Mason City, Lincoln and Eastern Railway Company, in Illinois, and known in these proceedings as the "Extension," and simultaneously executed a mortgage to William Dennison and Robert Turner, as trustees, conveying the property thus acquired for the purpose of securing an issue of $5,500,000 of coupon bonds (Record, 6).

7. November 16, 1874, two days before the appointment of the Receiver, although all of the equipment and other personal effects of the company were covered and conveyed by each of the deeds of trust, above mentioned, the officers of the company undertook to make a chattel mortgage, conveying all its rolling stock and other movable property to Joseph T. Thomas, for the purpose of securing certain floating debt creditors named in a schedule accompanying the instrument (Record, 8 and 297).

8. April 1, 1874, the company made default to pay the installment of interest maturing on the issue of $2,000,000 Danville, Urbana, Bloomington and Pekin bonds. October 1, 1874, it also made default in respect to its issue of $3,000,000 consolidated mortgage bonds. These issues constitute the first liens upon the company's original main line. It also defaulted July 1, 1874, upon the issue of $1,500,000 second mortgage (main line) bonds, also upon the issues of extension bonds (Record, 9).

9. All the mortgages or deeds of trust to secure the several issues of bonds are in the usual form. They convey all the property of the company then owned and thereafter to be acquired, including equipment and franchises, and contain the usual covenants for foreclosure in case of default (Record, 11–53).

February 1, 1875, some two months after the filing of the original bill, the Farmers' Loan and Trust Company voluntarily appeared without service of process and filed its answer (Record, 62), and on the same day filed its cross-bill, setting up the making and delivery of its several mortgages,

the issue of the bonds thereunder, the defaults in the payment of interest, and praying for foreclosure and sale (Record, 72). The cross-bill also prayed an order extending the Receivership for the benefit of the trustee, which order was made (Record, 1212, p. 90). All the parties to the original bill were made parties to the cross-bill. Inasmuch as the Farmers' Loan and Trust Company afterwards filed an amended and substituted cross-bill, by leave of court, upon which the case subsequently proceeded, the allegations of the original cross-bill need not be further recited.

Subsequently, by due amendments, other new parties, defendant to the cross-bill, were joined (Record, 84, 85), supposed to be judgment creditors of the railway company.

April 25, 1876, no issues having up to that time been joined, and no substantial progress having been made in the cause, the Farmers' Loan and Trust Company filed its *amended* and *substituted* bill of complaint by leave of the court, upon which the cause thereafter proceeded (Record, 86–101).

To this substituted bill the original complainants, the Turner Brothers, and the Indianapolis, Bloomington and Western Railway Company, Benjamin E. Smith, Joseph T. Thomas, C. W. Smith and William Dennison, being the trustees of certain junior mortgages, were made defendants, also certain judgment creditors (Record, 98).

The substituted bill shows by apt averments the making and delivery of the two mortgages above mentioned, to the Farmers' Loan and Trust Company, the issue of the bonds thereunder, the defaults in the payment of interest after due demand, the request of the requisite number of bondholders to foreclose for the principal as well as the interest, and the priority of lien of the $2,000,000 bonds issued by the Danville, Urbana, Bloomington and Pekin Railroad Company upon that part of the main line lying within the State of Illinois, and of the issue of $3,000,000 of consolidated bonds upon that part of the road lying in Indiana, and shows the latter issue of bonds to be next in point of lien in respect to the Illinois division of the road.

April 26, 1876 (Supplemental Record filed, by stipulation, p. 282), the Farmers' Loan and Trust Company filed its petition for the removal of the cause to the Circuit Court of the United States, showing that this is a suit in which there is a controversy in which the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs; that the petitioner was, at "the commencement of the original suit, and from thence hitherto has been and still is, a citizen of the State of New York;" that there is also a controversy arising under the Constitution of the United States; that the cause is not and never has been in condition to be tried in this court; that the defendants who are necessary parties are not yet all in court; the issues have not been made up, or the evidence taken; that all of the defendants now are, were, at the commencement of the original suit, and ever since have been, citizens of the State of Illinois, except * * William Dennison and Benjamin E. Smith, who were, "at the time of the commencement of the original suit, ever since have been, and still are, citizens of the State of Ohio" (Smith and Dennison being the trustees named in the second mortgage set up in the original bill and substituted bill; but Dennison having resigned, Joseph T. Thomas was duly substituted in his stead), and Joseph T. Thomas, "who was, at the time of the commencement of the original suit, ever since has been, and still is, a citizen of the State of Pennsylvania," and the several members of the firm of Turner Brothers, the complainants in the original bill, who were citizens of the State of New York, "but against whom default has been taken for want of prosecution, and for not answering the cross-bill of your petitioners, and who are not proper parties to this action, and against whom this petitioner has no controversy, but who are nominal parties, retained by order of the court for the purpose of protecting a Receiver appointed in the original suit."

The proper bond having been filed and approved (Supplemental Record, 284) the court proceeded no further, and

May 31, 1876, "A transcript from the Circuit Court of De Witt County" was filed, "containing, *among other*

things," the papers certified by the clerk and filed here (Record, 1 and 2).

July 19, 1876, the question having been raised as to the regularity and propriety of the removal, by the motion of the Farmers' Loan and Trust Company for an order "that this court do take jurisdiction of this cause," and by the motion of certain intervening petitioners to remand the cause, an order was entered overruling the motion to remand, and sustaining the motion of the complainant (Record, 159) that "this court do take jurisdiction."

July 18, 1877, the cause came on for hearing, and the court entered its first deeree establishing the priority of the several mortgages as between themselves, no defense having been interposed by the defendant company (Record, 189). The decree recites, among other things:

"This cause coming on to be heard at this term of court, and it appearing that the defendants to the cross-bill of the Farmers' Loan and Trust Company, that is to say, the Indianapolis, Bloomington and Western Railway Company," divers judgment creditors and the several members of the firm of Turner Brothers, "having severally failed to appear, plead, answer or demur to the cross-bill of said complainant, the Farmers' Loan and Trust Company, on motion of said last-named corporation, it is ordered and decreed by the court that the said cross-bill be taken as confessed, as to said defaulting defendants. And thereupon this cause came on to be heard on the said original bill, and the answers and replications thereto, and upon the said several cross-bills and the various answers and replications thereto, and upon the exhibits filed with said several bills, and the documentary evidence, proofs, as shown by stipulations on file, and reports of Master, on consideration whereof the court doth find the equity of the case to be with the complainant in the cross-bill, the Farmers' Loan and Trust Company, and that all and singular the allegations and charges in the cross-bill of said last-mentioned complainant are true, and particularly."

The decree thereupon proceeds to recite the making and

delivery of the main line mortgages, the issue of the bonds thereunder, and finds the amount due thereon, and adjudges the defendant railway company to pay the amount within a time limited, and in default directs the property to be sold, and provides for distribution of the proceeds, except as to certain unadjusted claims for labor and supplies, the amount whereof is provided to be paid into court for future disposition.

No appeal having been taken from this decree by any party, it remains in full force, and was finally executed by a sale of the mortgaged premises, October 30, 1878 (Record, 220).

May 8, 1878, an order was entered by way of further direction for the execution of the decree, providing substantially that instead of requiring the purchasers to bring into court the amount necessary to pay certain labor and supply claims then under consideration, the purchasers should assume their payment in addition to the bid (Supplemental Record, 288).

Due report of the sale having been made, exceptions were filed by the defendant railway company and by James Turner, a supposed intervening petitioner, severally (Record, 254, and Supplemental Record, 291).

The transcript filed here contains a large number of documents, orders, exceptions and the like, which only apply to the proceedings for the sale of the "Extension," so called, in which the appellees have no interest, and which in no way affect the questions now before the court.

December 23, 1878, an order was entered, at the hearing of the exceptions, overruling the exceptions filed, and "that the report of the said Masters be, and the same is hereby, in all things confirmed and approved" (Record, 230).

February 3, 1879, James Turner and the defendant railway company filed their petitions in the Circuit Court for

the Southern District of Illinois, praying an appeal from the order above mentioned (Record, 244) and thereupon--

An order was entered that "the said prayer for an appeal from the decree or judgment of this court, confirming said sale, be allowed" (Record, 244).

No *supersedeas* bond having been filed, and there being no stay of proceedings, the court thereafter proceeded, notwithstanding the appeal, to cause the deed to be delivered to the purchaser, who took possession of the property under the direction of the court.

The statement of facts filed with appellants' brief should be corrected in some respects.

1. The answer of the Farmers' Loan and Trust Company does not confess, by any means, all the allegations of the original bill of complaint, but expressly denies many of them not excepted in the statement (Record, 62).

2. The cross-bills referred to as having been filed by Denny, Blossom and Adriance, who were holders of bonds under the second mortgage, and are stated to have been citizens of the State of New York, were filed without leave of court. They were represented in all things by their trustees, B. E. Smith and Wm. Dennison (afterwards succeeded by Joseph T. Thomas), as above stated, and were never admitted as parties to the suit. They were not parties to any of the cross-bills filed by the Farmers' Loan and Trust Company.

The petition of James Turner, referred to as having called the attention of the court to the chattel mortgage, was not filed until October 30, 1878, more than a year after the entry of the decree, being the day on which the property was sold.

The alleged discharge of James Turner, as a bankrupt, though alleged in the petition filed, has never been shown to the court; the petition in which the fact is stated was not filed for more than a year after final decree, and not

until the day of sale. No attempt was made to stay the sale, and no application was made for that purpose.

BRIEF OF ARGUMENT.

I.

The assignments of error filed by the appellants present numerous questions which, we submit, are not before the court.

This is an appeal only from the order entered December 23, 1878, confirming and approving the Master's report of the sale, and does not bring before this court any question adjudicated in the final decree of July 18, 1877, or the modified decree of May 8, 1878. No appeals having been taken from these decrees, having been rendered by a court of competent jurisdiction, they must be taken as final and conclusive, as well upon this court, as upon the parties before the court below.

1. *As to the question of Jurisdiction.*

The question of jurisdiction was determined by the court by the preliminary order of July 19, 1876 (Record, 159), and necessarily inhered in the rendition of the final decree of July 18, 1877. The Circuit Court, being one of the tribunals appointed by law to hear and determine that question, its judgment cannot be reviewed or considered here except on appeal from the decree by which the question was finally determined. We are sensible of the rule that the question of jurisdiction may be raised at any stage of the proceedings, but that rule has no application to the present status of the question. The Circuit Court itself had no power in this case to review its own judgment, *after the end of the term*, upon the hearing of the exceptions to the report of sale. Not having been properly before the Circuit Court. at the hearing of the exceptions to the report of sale, it

cannot be brought here by an appeal from the order overruling these exceptions. Later on we shall endeavor to show that there is no valid objection to the jurisdiction.

2. The provision of the final decree for an absolute sale of the property, without regard to the statute of the State of Illinois providing for the redemption of lands from foreclosure sales; the alleged error of directing the sale without first ascertaining the amount of claims prior to the liens of the mortgages; the modification of May 8, 1878; the entry of default as to the Turner Brothers, the original complainants; and the subjection of the personal property to the payment of the prior mortgages, as well as the adjudication finding the whole debt due, are all questions which were finally disposed of and determined by the court before the sale, and cannot be brought here by an appeal from the order of confirmation.

II.

James Turner, one of the appellants, was not a party to the suit, and is not entitled to be heard here. He had filed on the day of the sale a petition for leave to intervene, but no order was ever entered granting him leave to intervene, or making him a party. And no step was taken by him to procure an order staying the sale.

It is claimed, on the other hand, that being a member of the firm of Turner Brothers, and named as one of the complainants in the original bill, he is, therefore, a party, and entitled to prosecute this appeal.

We submit, that even on that ground, he is not entitled to take or prosecute this appeal, because all of his partners should have united in the appeal in case it is to be defended on that ground. The appellants, therefore, move the court for an order dismissing the appeal of James Turner.

III.

It is admitted that the order overruling exceptions to the Master's report of sale, and confirming the sale, is an appealable order, and also that the defendant railway company is entitled to take and prosecute an appeal to this court from the decree of confirmation. But we submit that the appeal only brings up for the consideration of this court the regularity and propriety of the proceedings taken in the execution of the decree, and that if all the proceedings were in conformity to the decree, and in all respects regular and proper in form and substance, the order of confirmation should be affirmed here no matter what errors may inhere in the original decree. Passing, for the present, to those of the assignments of error which apply to the proceedings under the decree, the following are stated as the objections to the confirmation, though not insisted upon, in the printed brief filed.

1. *Inadequacy of the Price.*

To this objection it is sufficient to answer that there is no evidence in the record that the price was inadequate. No responsible bid was presented for a substantially greater sum, nor was there proof offered that any person was in any way deterred from bidding.

Moreover, this is a question which has always been held to rest in the sound discretion of the court, and its action in respect to it will not be reviewed by the appellate court.

2. *Insufficiency of the Notice.*

The report of the Masters shows that notice of the sale was given by the Masters in exact conformity to the provisions of the decree.

All the remaining questions raised by the assignments of error, and in the exceptions to the report of sale, had already been finally determined by the previous decrees, and were then beyond the control of the court.

Protesting that these decrees, not having been appealed from, are final and conclusive, and are not now before this court for review, we think an examination of the record will show that there was no substantial error.

IV.

1. *The jurisdiction of the Circuit Court was complete.*

Having been commenced in the State Court, the case was properly removed to the Circuit Court of the United States, for the reason that it clearly appears by the record, and by the petition for removal, that a Federal question, arising under the Constitution and laws of the United States, was involved. It appeared by the original bill of the Turner Brothers, by the cross-bill of the Farmers' Loan and Trust Company, and also by its amended and substituted cross-bill, that, April 1, 1869, the Danville, Urbana, Bloomington and Pekin Railway Company, one of the constituent companies, forming, by subsequent merger and consolidation, the Indianapolis, Bloomington and Western Railway Company, had outstandihg an issue of $2,000,000 of bonds, secured by a mortgage or deed of trust to the Farmers' Loan and Trust Company, conveying all its property and franchises, *including its equipment* and all personal property then held, or thereafter to be acquired. Also, that the consolidated company, on October 1, 1869, had outstanding an issue of $3,000,000 of bonds, secured by mortgage or deed of trust to the same trustee, conveying its property, including equipment and franchises, in substantially the same form.

By a long course of judicial decisions the Supreme Court of Illinois had held such conveyances to be valid, in respect to all property, movable or otherwise, used or procured for use in connection with the maintenance and operation of a railroad. May 13, 1870, a new constitution was adopted in convention, ratified by the people July 2, 1870, which went

in force August 8, 1870, subsequent, as will be seen, to the issue of the bonds and the execution of the mortgages above referred to. By the new constitution it was declared:

Article XI., sec. 10. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the General Assembly shall pass no law exempting any such property from execution and sale (Hurd's Illinois Statutes, 1877, p. 72).

At this time there was in force in Illinois a statute enacted in the Revised Statutes of 1845, providing:

That no mortgage, trust deed, or other conveyance of personal property, having the effect of a mortgage or lien upon such property, shall be valid against the rights and interests of any third person, unless possession thereof shall be delivered to and remain with the grantee, or the instrument shall provide for the possession of the property to remain with the grantee, and the instrument is acknowledged and recorded as hereinafter directed, and every such instrument shall, for the purposes of this act, be deemed a chattel mortgage (Hurd's Illinois Statutes, 674).

The act provides that the acknowledgment shall be taken before a justice of the peace of the town or district where the mortgagor resides, if a resident of the State; that it shall be admitted to record in the county where the mortgagor resides, and thereupon shall be good and valid until the maturity of the debt, *provided* such time shall not exceed *two* years.

Under this state of the law it was claimed by the defendant railway company and others, and is now asserted here, as the effect of the constitutional change, that, more than two years having elapsed since the new constitution went into effect, the lien of the two prior mortgages to the Farmers' Loan and Trust Company, as to the "goods, chattels and personal property conveyed," had expired, and the company made the chattel mortgage, so called, to Joseph T. Thomas, as trustee, for the benefit of certain floating debt creditors, conveying:

"All and singular the engines, cars, machinery, tools, wood, coal, furniture, safes, iron rails, not in tracks, ties,

timber, iron, steel, spikes, wheels, oil waste, stationery, office, station and railway supplies, and all other personal property of every kind and description" * * "it being the intent to embrace all personal property or fixtures of all and every kind, character or description," etc. (Record 236).

It was claimed in the original bill of the Turner Bros., "as matter of law," that this "chattel property constitutes a first and paramount lien on all and singular the goods and chattels and personal property therein described, anything in the said prior indebtedness to the contrary notwithstanding." Although the decree of the court below had determined the claim adversely to the beneficiaries, under the chattel mortgage, the same claim was reasserted by these appellants at the hearing of the exceptions, and is now made here.

But it was asserted by the Farmers' Loan and Trust Company that its prior mortgages, which had already conveyed this property, notwithstanding the provision of the new constitution, were paramount to the chattel mortgage, because these prior mortgages had vested in the Farmers' Loan and Trust Company a perfect title to the property, for the purposes of the security, which could not, under the Constitution of the United States, be divested by the State of Illinois, either by an amendment to its constitution or otherwise.

This presented a Federal questien, arising under the Constitution and Laws of the United States, and authorized the removal under the Act of 1875, upon the petition of the Farmers' Loan and Trust Company, without regard to the citizenship of the parties.

2. *The controversy was wholly between citizens of different States.*

The petition for removal, which is supported by all the papers and records, shows that the Farmers' Loan and Trust Company was a citizen of the State of New York, that the principal defendant, the railway company, was a citizen of the State of Illinois, and that all of the defendants were citizens of different States, from

the real complainant the Farmers' Loan and Trust Company, except the Turner Brothers, who had abandoned the prosecution of their bill. Their counsel had withdrawn his appearance. Default had been entered against them for want of prosecution. And, as shown by the petition for removal, their bill had only been retained by the court, for the reason that its dismissal might, for technical reasons now very well shown by the appellant's brief here, carry with it the Receivership as well as the cross-bills. The only controversy substantially left at that time was between the Farmers' Loan and Trust Company on the one side and the defendant railway company on the other, together with the trustees of the second mortgage, Benjamin E. Smith, Joseph T. Thomas and the several judgment creditors. The Turner Brothers were merely formal parties, as no relief was asked or obtained as against them. In the Circuit Court the motion to remand was heard before Mr. Justice DAVIS, then an associate justice of this court, who held, on entering the order taking jurisdiction, that the court would look into the record to ascertain the real and substantial nature of the controversy and the actual parties interested therein, without regard to the formal parties joined on one side or the other; that if it should appear that all the real and substantial parties to the controversy on the one side were citizens of different States from all the parties on the other, the case was removable under the Act of 1875, without regard to the joinder of mere formal parties, and that the Turner Brothers, though citizens of the State of New York with the trustee, were not such necessary or proper parties to the controversy, as to defeat the jurisdiction of the Circuit Court, under the existing circumstances of the case. It furthermore appeared that the Turner Brothers having never prosecuted the suit, about seven months after the exhibition of their bill were adjudicated bankrupts (Record 144), and were no longer even proper parties to the suit. The defendant railway company had filed a paper suggesting the bankruptcy shortly before the petition for removal was presented (Record, 137), but having never been presented for consideration, the court took no action in respect to it. There being no relief sought by any of the other parties against either the Turner Brothers or their assignee in bankruptcy,

and there being no occasion for their being brought into court, no one was interested in obtaining an order making the assignee a party. The assignee, himself, never appeared except for the purpose of presenting a claim for the expenses of the Turner Brothers, in commencing the suit and procuring the appointment of the Receiver. Having thus "put aside" "the mere form of pleadings," "and placed the parties on different sides of the matter in dispute, according to the facts" (see Removal Cases, 100 U. S. 469), it appeared according to the pleadings and the then present state of the record, that there was but one primary controversy represented by the Farmers' Loan and Trust Company on the one side, based upon the two mortgages already described, and the defendant railway company on the other, with the several junior incumbrancers and judgment creditors. Having abandoned the prosecution of their suit, having been defaulted for want of prosecution, and having been adjudicated bankrupts, the case of the Turner Brothers had no practical or substantial connection with the controversy, and there was at the time of the removal nothing left of the suit except that part which related solely and exclusively to the priority of the mortgage liens, and as to this, the controversy was between the Farmers' Loan and Trust Company on the one side, and the defendant railway company on the other. If the Turner Brothers still continued parties to the suit, they were nominal parties only; they had no relation to the controversy, requiring any relief or adjudication against them, or in favor of the trustee, but were only joined because the court had taken custody of the *res* at their suit. A separate and independent suit might well have been originally brought by the trustee in the Federal courts, but for the difficulty presented by the fact that the mortgaged premises were in the physical custody of the officer of another court, under an order improvidently entered. This being the case, to paraphrase the language of the court in the *removal cases*, it is apparent that in the then condition of the suit, the only controversy to be settled was between the mortgage trustee, a citizen of the State of New York, on the one side, and the railroad company, and the subsequent incumbrances on the other, each of whom were

citizens of different States from the trustee. As such, under the construction of the Statute, given by this court in the *removal cases*, the suit was removable.

There was much, at the time, in the circumstances to justify the suspicion that the suit originally brought by the Turner Brothers was collusive; that it was the common purpose of the complainants and the railway company to prevent the trustees from seeking relief in the Federal courts. The manner in which the Receiver was appointed, without notice to any of the trustees, by the voluntary appearance and consent of the company, and the subsequent abandonment of the litigation by the complainants, although their bankruptcy did not occur for more than six months after the commencement of this suit, as well as numerous other circumstances, all gave color to the suspicion, and it was believed then, and is believed now, that parties will not be permitted, by the adoption of collusive devices, to defeat the constitutional right of these trustees to take the judgment of the Federal courts upon the questions involved in the suit.

3. *This is a suit in which there is a controversy wholly between citizens of different States, and which can wholly be determined as between them.*

The petition for removal fully discloses the citizenship of the parties. The record and pleadings show that there "exists in the suit a separate and distinct cause of action in respect to which all the necessary parties on one side are citizens of different States from those on the other" (*Hyde* v. *Rable*, 104 U. S., 409; *Barney* v. *Latham*, 103 U. S., 210). There can be no question made in respect to the citizenship of any of the parties except Turner Brothers, who were, it is true, citizens of the State of New York with the Farmers' Loan and Trust Company; all the others were citizens of different States from the trustee. As we have seen, while under correct pleading, they were properly joined as defendants to the cross-bill, in the State Court, to the final determination of the controversy propounded by the Farmers' Loan and Trust Company, the Turner Brothers were

not indispensable parties. No relief was sought against them, and none was necessary, they were not necessary parties in any sense.

The controversy, as between the Farmers' Loan and Trust Company and the Railway Company, was an wholly separate and distinct controversy, which could be determined as between them without the presence of any of the other defendants. And so, the controversy of the Trust Company with each of the several junior incumbrancers was a separate and distinct controversy wholly between citizens of different States, which could be determined as between them, severally, without the presence of any other defendant except the Railway Company. And so it is clear, under the authority of *Barney* v. *Latham, supra*, the whole suit was properly removable upon the petition of any of the parties.

4. Under the local prejudice act of 1867, the suit was also removable, and was properly removed on the petition of the trustee.

5. *The removal was in good time under the Act of* 1875.

(*a.*) The only objection to the jurisdiction stated in the brief filed, is that the suit was not removed before or at the first term at which it could be tried, and the statement of the argument furnishes its own complete answer.

It is stated in appellant's brief that the defendant railway company was not served with process in respect to the cross-bill of the Farmers' Loan and Trust Company until December 7, 1875; that this process was returnable on the third Monday of March, 1876.

The petition for removal was filed April 26, 1876, which was at the March term of the court, and which was unquestionably the first term at which the case could be tried, according to the very letter of the Act of 1875.

But appellants undertake to assert that, under the statute, the default of the railway company might have been entered, and a decree taken against it. Counsel seem to have over-

looked the effect of the words in the statute "*or within such further time as may be granted by the court.*"

Therefore it does not necessarily follow that the complainant is entitled to a default, and a decree *pro confesso*, for the court may, in its discretion under the statute, allow the defendant further time to plead, answer or demur. And it cannot be denied that it is competent for a party, legally entitled to do so, to remove a cause for the very purpose of preventing the undue exercise of this discretion. Moreover, no default had been entered against the railway company.

However that may be, it is clear that on the appellant's own statement the case was removed at the first term at which it was triable, being the first term at which the defendant railway company was called upon to appear to the cross-bill of the Farmers' Loan and Trust Company.

(*b.*) But there were other defendants besides the railway company. There were the trustees named in the junior mortgages, Benjamin E. Smith, William Dennison and Joseph T. Thomas, and a host of judgment creditors, some of whom had filed answers to the cross-bill and to some of its amendments; some had not yet answered; some had not yet been served, as appears by the petition for removal. No replications had been filed to any of the answers. None of the evidence had been taken by any of the parties. No issues of any kind, either of law or of fact had been joined. The cause was wholly unripe for hearing.

The complainant, the Farmers' Loan and Trust Company, had just filed, *by leave of court*, at the same term, an amended and substituted cross-bill, to which no defendant was yet bound to answer; this amended and substituted cross-bill was necessary, under the facts of the case, to entitle the trustee to recover the amount claimed to be due, and to obtain the relief which the facts existing at that time warranted. At the time of filing its original cross-bill, the default in the payment of the interest upon the bonds secured by its mortgages had not continued for the period of six months to entitle it to declare the principal debt due, and at the time of the filing of the substituted bill all the necessary facts had transpired, and it was entirely competent for the court to permit an amendment of the pleadings so as to allow

the complainant to take advantage of the existing state of facts. So it may be said, that at the time of filing the first cross-bill, the trustee had not yet received the necessary request from the trustee required by the terms of one of the mortgages; but before the exhibition of the substituted cross-bill, the requests were formally received and susceptible of ready and clear proof. The amendment of the pleadings, we submit, under the Illinois statute, is a matter resting in the sound discretion of the court, and its order in that regard is not now to be imputed as error. At the time of the removal, the case stood upon the amended and substituted bill of the Farmers' Loan and Trust Company, in respect to which no issue had been joined by any party, and no party was in default. Not being triable, the case was removable under the Act of 1875.

(*c.*) Under the Local Prejudice Act of 1867, there was no requirement that the petition for removal should be presented before or at the first term at which the suit could be tried.

(*d.*) It is not necessary that there should be a controversy represented by a joinder of issues. There is a controversy in every suit, for the purposes of jurisdiction in the courts, whether State or Federal, whenever one party makes a claim against another. It is the claim which propounds the controversy, and not the joinder of issues. Therefore, the argument of the appellants, based upon the fact that the defendnnt railway company had no controversy with the trustee, falls to the ground. The trustee was not bound to wait until the last moment before presenting its petition for removal, to see if an issue should be joined. No better illustration of the argument could be found than the fact that we now find the appellant railway company here disputing some of the propositions propounded in the substituted bill. We find it here now asserting that the cross-complainant's mortgages were not prior and superior to the alleged chattel mortgage, in respect to the equipment and other movable property. We find it here now asserting that the court could not decree its property to be

sold without regard to the statutes relating to the redemption of lands sold under mortgage foreclosures; and we find it here now asserting that the court could not lawfully decree the payment of the principal as well as the interest of its mortgage debt, upon the facts alleged and proved in the court below. And we are instructed by this attitude of the company to believe that, even if its default had been entered in the State court, and a decree *pro confesso*, and if the trustee had been content to take the same decree there that it finally obtained in the Circuit Court, it would have found itself bound to submit the determination of these questions to the Supreme Court of Illinois on appeal, instead of to this court, where, under the Constitution and Laws of the United States, we are entitled to have them determined.

It does not occur to us to be entirely consistent with the assignment of errors for this railway company to assert here that it has and had no controversy with the trustee, and that there was, therefore, no ground for the removal of the cause.

(*e.*) We assert confidently that even after default and decree *pro confesso* in equity, notwithstanding the opinion of the learned judge, cited by counsel, there may still be left many matters of dispute. The form and effect of the decree to be framed may be still in dispute. The defendant, though in default as to the alleged facts, may still be heard; and, if aggrieved, he may still appeal to correct the errors of the decree. If it is not so, how came this defendant here? If it is so, does not the same reason exist for a removal after default and decree *pro confesso* as before? The form of the decree may be of the very essence and substance of the controversy. The facts may well be altogether undisputed, to the extent that the defendants may well be contented with their statement in the bill. Why may not the controversy as to the law be as well removed as a controversy of fact? Experience teaches us that it is mainly as to matters of law that parties seek the judgments of the Federal courts.

In this case, however, before the removal, neither decree

pro confesso nor default had been entered against the railway company, and the result has shown that the trustee had the same reason to pray for a removal of the suit as though the railway company had asserted the same propositions by plea or answer that are now set up in the assignments of error.

V.

There was no error in the amended decree of May 8, 1878, entered by way of further directions for the execution of the final decree of July, 18, 1877.

1. Counsel for the appellants make a great mistake in stating in their brief on page 19, that the original decree of July 18, 1877, "provides that the purchaser of the mortgaged property shall assume certain Receiver's debts, and claims for work, labor, supplies and material done and furnished during the six months next preceding the first day of December, 1874, in the operation of defendant's railroad." On the contrary, the original decree provides in respect to them, that the amount shall be paid into court, to abide the further order of the court, and such of them as should be ultimately allowed, in the further progress of the case, were declared to be prior and superior to the lien of the mortgages.

2. We do not dispute the assertion of appellants that the decree of July 18, 1877, was a final decree from which an appeal might have been taken. But we assert that in respect to the claims referred to it was not a final decree, because it simply provided that an amount sufficient to pay them should be paid into court by the purchasers, and left every question concerning the distribution of that part of the fund open to all the parties in interest. Notwithstanding this provision of the decree, on a final determination of the subject, the court might have disallowed all the claims

and distributed the whole fund to the other lien creditors, whose claims were established by the decree, in the order of their priority.

3. Nor do we dispute the proposition, supported by a great array of authority, that a final decree in chancery cannot be set aside or amended on motion after the term at which it was rendered, and can only be altered or reversed, except as to clerical errors, on appeal.

4. The decree of May 8, 1878, does not purport to amend or alter the original decree in any matter which was finally disposed of in the decree of July 18, 1877. It is simply an order, by way of further direction, for the execution of the decree, to the effect that, instead of paying into court the amount of the fund, as formerly required, to abide the further determination of the court, the purchaser should take the property, subject to the payment of the fund to the several claimants, when the amount should be finally determined, and it was expressly stated in the original decree that no other question was reserved except the determination of the amount to be allowed to these claimants. Therefore it is clear that, not having rendered a final decree in respect to these claims, it was competent for the court to do so at the time of entering the modification of May 8, 1878. This court has held, at the present term, in an appeal in this case, *Farmers' Loan and Trust Company and others* vs. *Waterman and others*, that this decree has the effect of a final decree as to the trustee. If it is a final decree, the appellants were bound to appeal from it, if aggrieved, within the time limited by law. Applying the doctrine claimed by them, and supported by authority, at the time of the sale it had passed beyond the control of the court, and could only be reversed or altered on appeal. It was not competent for the court to set aside a sale made in strict accordance with its own decree, and this court has no jurisdiction now to review it, on appeal from the order confirming the sale.

5. There is no merit in the objection. The appellant railway company is in no way prejudiced by the order. The

original decree appropriated the whole of the proceeds of the sale to the several classes of bondholders, except an amount sufficient to pay these claims, and certain other claims, all equally the obligations of the railway company. Whether the amount went to the bondholders or to other creditors of the company is immaterial to the railway company; in either case the indebtedness of the company was equally reduced or discharged—no more and no less. The appellant Turner was not a party to the suit at the time, has never since been made a party, and has taken no appeal from the order complained of.

6. It was certainly within the jurisdiction of the court below to determine whether or not the order complained of was simply by way of further direction as to matters not already finally disposed of. The decree decides the question substantially to the effect that the former decree was not final in this regard. That decision, not having been appealed from, is conclusive, as well upon the court as upon all the parties.

VI.

There was no error in decreeing the sale of the property without determining the substantial amount of the prior claims to be assumed by the purchaser, as alleged.

1. While it may be true that in ordinary cases the rule is a sound one which favors the exact determination of the amount of the claims of all parties in interest before a final decree is entered in respect to a part; and that the practice in the present case should be avoided, unless there are strong reasons to support it. But recent experience has demonstrated that there are cases where it is impossible, without the sacrifice of interests of the highest character, to adhere strictly to the rule. This case furnishes an illustration. There was a railroad extending for 202 miles through the

greater part of two States, being operated by a Receiver, under manifold difficulties. The company itself was not actually in court, nor was it taking any part in the controversies of its creditors. The holders of all the different classes of mortgage bonds were ready to settle, by the decree of the court, their several priorities and the amounts due them respectively. All that stood in the way of a speedy determination of the whole case was the ascertainment of the amount of certain claims made by intervening petitioners, not parties to the suit, which depended apon serious questions then pending in this court. In the interest of justice the court proceeded to decree, making provision for such of these claims as should ultimately be allowed. This decree was rendered July 18, 1877, and the records of this court show that the Circuit Court was not able to proceed to final decree in respect to the claims until October 18, 1881, more than four years. Who can say what evils would have followed to all the best interests of all concerned if the court had found itself obliged to wait for all that time before entering its final decree? In the meantime there would have doubtless arisen a multitude of other claims growing out of the operation of the road by the Receiver, which it would have been an absolute impossibility to fix definitely.

2. We insist that there was no error, because all the relative rights and liabilities of all of the parties to the suit were settled and determined by the decree.

3. It is competent for a Court of Equity to decree a sale of mortgaged property and to require the entire proceeds to be paid into court for distribution, in advance of determining the order of priority or distribution. It is also competent to decree a sale subject to existing liens.

4. That is certain which is capable of being rendered certain. Here the sale was made subject to claims then under consideration by the court for work, labor and supplies done and materials furnished within the six months next

preceding December 1, 1874, in and about the maintenance and operation of the defendants' line of road. Any person desiring to know the amount of these claims could have obtained precise information by an examination of the records of the court, where the Master's reports remained on file for nearly a year before the sale.

5. This is also a question which was disposed of by the decrees of the court long before the sale, and could not be raised for the first time on exceptions to the Master's report. At that time these matters had all passed beyond the control of the court in virtue of its duly enrolled decrees.

VIII.

The decree disposed of the Chattel Mortgage.

1. The complainant, the Farmers' Loan and Trust Company, set up in its cross-bill and in the amended cross-bill the execution and delivery of its two mortgages or deeds of trust, and the issue of the bonds thereunder, and claimed priority for the debt thereby secured over each and all of the several junior mortgages, in respect of the main line of defendant's railway and the equipment and other movable property pertaining thereto, including the alleged chattel mortgage; the decree established the priority of lien of the debt represented by this trustee as to all the property conveyed, and provided for the distribution of the proceeds first to the payment of the debt and interest due upon these bonds, in preference to all the debts secured by the subsequent mortgages. Having thus established the priority of lien of these mortgages as against all parties, a decision against the claim of priority in favor of the chattel mortgage as to the movable property necessarily inheres in the decree, as well as a determination of all controversies of every nature inherent in the case and

adverse to the matters adjudged. The trustee of the chattel mortgage, Mr. Joseph T. Thomas, of Pennsylvania, was made a party to the cross-bill; he appeared and pleaded to the cross-bill as the successor of William Dennison, the trustee of the second consolidated mortgage. It is true he did not present to the court any claim in respect to the chattel mortgage; that was a matter with which the cross-complainants had nothing to do. It must be supposed that he was advised that the chattel mortgage was of no validity as against the prior mortgages. As a junior encumbrancer, he was fully protected by the provision of the decree requiring the payment into court of the surplus, after paying off the amount of the prior mortgages (Record, p. 98).

2. The opinion of the learned judge, delivered in overruling the exceptions to the Master's report of sale, declares that the chattel mortgage was disposed of by the decree. The court says: "It must be considered that when the court adjudicated upon that question and determined that the bondholders, under this mortgage, had a prior and better right, that it also decided the other question, although nothing is said in the decree as to the right of Thomas, the trustee of the chattel mortgage."

8 *Bissell*, 384.

3. Even if it were true that the trustee of the chattel mortgage was not a party to the suit, and is not bound by the decree, it does not follow that the decree below should be reversed for that reason. The result would simply be that Thomas is still at liberty, if so advised, to pursue the property, to which he claims the prior lien, for the purpose of enforcing his security.

4. Whatever may be the right of the Turner Brothers and of the appellant James Turner, as their successor and representative, under this so-called chattel mortgage, it is not competent for the appellant Turner to assert them here, not having been made a party to the suit. Thomas, the trustee, is the representative of all the beneficiaries under that in-

strument. He appeared below and excepted to the decree of confirmation (Record, 231), but has taken no appeal to this court.

5. The decision of the Circuit Court against the priority of the chattel mortgage, and establishing the lien of the other mortgages in respect of the movable property, was correct.

In a recent case the Supreme Court of Illinois has passed upon the question.

In the case of *Thomas Cooper* and others, collectors of TAZEWELL and DEWITT Counties, *v. Austin Corbin* and others, that Court held, in respect to these identical mortgages to the Farmers' Loan and Trust Company:

"If they (these mortgages) were valid and effectual, the sale under the foreclosure decree would operate to pass the title to the property free and clear of all subsequent liens. But it is said the deeds of trust did not create a valid lien on the personal property, as they were not acknowledged, as required by the act in regard to chattel mortgages. We do not think the act in regard to chattel mortgages has any bearing whatever on mortgages or deeds of trust of the character of that under consideration. The Chattel Mortgage Act was never intended to apply to such property as is named in the two mortgages. The Chattel Mortgage Act requires a chattel mortgage to be acknowledged in the township in which the mortgagor resides. In what township should a railroad company acknowledge a chattel mortgage? As an example, take the Illinois Central Railroad Company, running from Cairo to Galena. Should it desire to execute a chattel mortgage, which of the various townships through which its line extends should it select? It no more resides in one township through which it passes than another. And surely the Legislature never intended to require an acknowledgment to be made in every township through which the road passes Again, the mortgages given by railroad companies are not usually due in less than twenty or thirty years, and yet, if they are controlled by the Chattel Mortgage Act, they cannot run longer than two years. The validity of a chattel mortgage being limited to two years, it would necessarily follow, if railroad companies were required to conform to the act, the right to borrow money on long time to construct or equip a road, and secure it by mortgage on its property, would in effect be taken away. The

Chattel Mortgage Act was framed many years ago; we find it in the revision of 1845, when it became a law of the State. Railroad mortgages were unknown in this State, and the reasonable inference is that it was never intended to have any application to a species of property which then had no existence, but which has grown up since its passage, but was intended to apply to chattels that were owned, possessed and used, as they were at that time in use, among the people in the pursuits of life (see *P. and S. R. R. Co.* v. *Thompson*, 103 Ills., 187).

The railroad company in this case had express authority under its charter to mortgage all of its property, *both real and personal, as an entirety*. The fact that the mortgage embraced the franchise, the real and personal property, did not impair its validity. It was enough that the Legislature had conferred the power on the company, and that the power had been executed in the manner required by the charter. When the mortgage was executed, acknowledged and placed upon record, it became a lien upon all the property of every description it contained; and when the mortgage was subsequently foreclosed and the property sold, the title of the purchasers, for the purpose of cutting off subsequent liens, would relate back to the date of the record of the mortgage."

The opinion is in manuscript and unpublished. A written copy is now presented and filed for the information of the court.

Here is a direct decision of the court of last resort in Illinois, to the effect that these mortgages made to this trustee were valid conveyances of the movable property as well as of the railroad and real estate, notwithstanding the provisions of the new Constitution and of the laws relating to the execution and acknowledgment of chattel mortgages.

Therefore the chattel mortgage in the present case must be taken to be entirely subordinate to the lien of the prior mortgages, as established and declared by the decree of the Circuit Court.

6. Complaint is made that the terms of the sale were onerous and inequitable, because every bidder was obliged to deposit $50,000 as security for the *bona fides* of his bid, and to pay $50,000 more in cash on the day of sale; and

because he was further obliged to pay in cash or Receiver's certificates, at the delivery of the deed, so much of the Receiver's debts as arose in the operation of the road. Instead of imposing a hardship, these provisions were intended to ameliorate the ordinary terms of sale. Ordnarily, a purchaser is required to pay the whole amount of his bid in cash; the provisions complained of in everything that required less tended to make the terms unusually easy, and to widen the field to competitive bidders. That a vast property of this character, which sold for $1,000,000, should not be put up to sale without a guaranty of good faith, amounting to at least $100,000, we think need not be argued.

VIII.

There was no error in the decree requiring the sale to be made without regard to the laws of the States of Illinois and Indiana providing for the redemption of lands from foreclosure sales.

We do not care to burden the court with a discussion of this question, for two reasons, *First*: It was before the court in two cases at the last term, and was fully argued both orally and in print and in the case of *Hammack* v. *The Farmers' Loan and Trust Company* (unreported), this court, in an elaborate opinion, reached the conclusion that the statute relied upon by the appellants has no application to the sale of a railroad and its equipment and franchises under a mortgage foreclosure.

And *second*, because, since the last term of this court, the Supreme Court of the State of Illinois, being the court of last resort, whose decision of this question is binding upon this court, has reached precisely the same conclusion.

Peoria and Springfield Railroad Company v. *Thompson et al.*,

103 Illinois, 207 (*advance* sheets). A copy of the advance sheets containing this opinion is presented and filed for the information of the court.

IX.

Under the circumstances of the case there was no error in proceeding with the cause after the bankruptcy of Turner Brothers.

1. It is to be borne in mind that there were peculiar circumstances surrounding the situation of the case, calling upon the court, sitting as a court of equity, and in its sound discretion, to abate the rigor of many of the technical rules applicable to equity pleading and practice, in order that justice might be done. The court had, improvidently as we think, seized upon all the property and franchises of the defendant railway company, upon a bill of complaint filed by the Turner Brothers, for the purpose of adjusting the priorities of the several issues of bonds. Each issue of bonds was secured by a mortgage to one trustee or another, who were, as frequently held by the court, the only proper representatives of the bondholders. While the original complainants never caused service of process to be made upon any of these trustees, they were severally joined as parties defendant to the suit. No good reason was stated in the bill, or ever shown to exist, why the complainants should have begun the suit; no application was ever made to any of the trustees to prosecute, or to take possession of the property. But learning indirectly of the predicament of the property which they were bound to protect, these trustees severally voluntarily appeared. They could do no otherwise than interpose their cross-bills. They could not commence or prosecute original proceedings, because the custody of the property in an officer of another court would have rendered a decree of sale impossible of execution. It was therefore in virtue of the cus-

tody of the property, and not in consequence of the pendency of the original bill, that the necessity of appearing in that court and in that case arose. Therefore the case should be considered in respect to its peculiar circumstances, and should not be regarded as subject to all the rules which govern in ordinary cases, where no such complicated state of facts exists. Upon the filing of the cross-bill of the Farmers' Loan and Trust Company the court made an order extending the receivership to that cross-bill (Record 1,212, 89, 90), and thereafter the custody of the court of the property under the cross-bill, gave the court jurisdiction of the whole subject-matter, without respect to the condition of the original bill. All of the rights of the Turner Brothers, as the holders of the different classes of obligations of the company, were represented by the trustees of the several mortgages. There was no occasion for their continued presence in court, nor for their prosecution of the suit. The order was made, extending the receivership to the cross-bill, long before the bankruptcy of the Turner Brothers. After their bankruptcy the several trustees as fully represented their assignee, as before they had represented them. They were constantly represented in court through their trustees. The custody of the property being in the court under the cross-bill, it was competent for the court to proceed to administer it for the benefit of all parties according to equity.

2. While it may be true that upon the adjudication of the Turner Brothers as bankrupts, by operation of law, they became divested of all their property and rights in and to the property; that they ceased to have any interest in the subject matter of the original bill, and that their suit had become so defective that *they* could not proceed any further in their own name against the defendant, it does not follow that the court was bound to permit the property to linger and languish in its hands, nor were the other parties bound to do so. Neither the court nor the parties could compel the assignee to appear and prosecute. He had that liberty, but did not see fit to exercise it. The property was in the hands of the court, and the court was bound to ad-

minister it as to equity and justice might appear. Having properly come into court, before the adjudication of bankruptcy, the several trustees lost none of their rights by the bankruptcy. It was for the estate to determine whether it had sufficient interest in the case for the assignee to appear and prosecute. No affirmative relief against the Turner Brothers was sought or needed by any party, rendering the presence of their assignee as a party either necessary or desirable (*Eyster* v. *Gaff*, 91 U. S., 523). As before remarked, the several trustees fully represented the assignee in respect to each of the several classes of claims.

While it is true that the defendant filed a plea setting up the bankruptcy of the Turner Brothers, it was never brought to the attention of the court, and no order in the premises was ever sought, and none was either granted or denied. The defendant railway company never made active objection to the procedure on account of the absence of the assignee.

3. Objection is made to the filing of the amended and substituted bill by the Farmers' Loan and Trust Company by leave of court after the bankruptcy of the Turner Brothers. It is competent for a Court of Equity, in its discretion, to permit the amendment of pleadings at any time, in furtherance of justice. Whether the Turner Brothers were in court or not, the property was in court, the railway company was in court, and there were other parties in court claiming that the property should be disposed of according to equity. It was the duty of the court so to dispose of it, and in the exercise of that duty the same right to control the pleadings rested in the court as in other cases. The court was no more bound to determine the case upon defective or insufficient pleadings or proofs after the bankruptcy of the Turner Brothers than before.

4. It is also claimed that when the original bill was dismissed, the cross-bills went with it—the suit was ended. The main difficulty with this argument is that the original bill never was dismissed. The recitals of the decree show

that the case proceeded to hearing upon the "original bill, and on the said several cross-bills and the various answers and replications thereto," etc., etc.

5. But these are all questions finally determined by the decrees of the court, which could not be raised by exceptions to the Master's report, nor by appeal from the order of confirmation, and which are, therefore, not now before the court for review.

X.

It is objected that it was neither averred nor proved that the principal and interest of the bonds ever became due and payable.

1. In respect to this question in the first mortgage, made to secure the issue of the $2,000,000 of bonds of the D. U. B. and P. Company (Record, 15), it is expressly provided that:

"ARTICLE FIFTH. In case default shall be made in the payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented, and the payment of the interest therein specified having been demanded, and that such default shall continue for the period of six months after the said coupon shall have become due and been demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the trustees, become immediately due and payable."

The amended and substituted bill of the Farmers' Loan and Trust Company shows (Record, 90) that:

"*Twelfth.*—Your orator would further show unto your Honor, that default was made in the payment of the semi-annual installment of interest on said bonds which fell due on the 1st day of October, 1874, and upon every installment

of interest falling due subsequent to the date last aforesaid, and that said defaults have continued hitherto and still continue; that demand was duly made for the payment of a large amount of said coupons falling due on the said 1st day of October, 1874, on the day of their maturity, in accordance with the terms of said indenture, and upon such demand payment was refused and default made, which said default has continued hitherto and still does continue."

Article eighth of the mortgage provides further that (Record, 17):

"It is hereby declared and agreed that it *shall be the duty* of the trustees to exercise the power of entry (or sale?) hereby granted, or both, or to proceed by suit or suits, in equity or at law, to enforce the rights of the bondholders in the several cases of default herein specified, in the manner and subject to the qualfications herein expressed, upon the requisition of the bondholders herein required, as follows:

First.—If the default be as to interest or principal of any of the said bonds, or as to any payment into the sinking fund established by these presents, upon a requisition signed by any holder or holders of not less than one hundred of the said bonds, and a proper indemnification by such holder or holders to the trustees against the cost and expenses to be by them incurred, it shall be the duty of the trustees to enforce the rights of the bondholders under these presents, by entry, sale, or suit or suits, in equity or at law, as they, being advised by counsel learned in the law, shall deem most expedient for the interests of the holders of said bonds."

The amended and substituted bill proceeds to aver (Record, 90):

"*Thirteenth.*—Your orator would further show unto your Honor, that on the 13th day of March, 1876, it was duly requested in writing by the holders of a large majority of said two thousand bonds, to proceed and foreclose the said mortgage given to secure said last named bonds, in accordance with the terms of the said indenture of mortgage.

Fourteenth.—Your orator would show unto your Honor, that by virtue of the said default in payment, and of the request as last aforesaid, by virtue of the power vested in your orator by said indenture of mortgage, *it has declared*,

and does hereby declare, the entire principal of said two thousand bonds to be now due and payable.

Fifteenth.—Your orator further shows unto your Honor, that it is advised by counsel learned in the law, and verily believes, that the entire principal of said two thousand bonds, with said several installments of interest falling due thereon on the 1st day of October, 1874, and on the 1st day of April, 1875, and on the 1st day of October, 1875, with the arrearages of interest on said past due installments, together accruing since the 1st day of October, 1875, are now due and payable to your orator, and are a valid and subsisting first lien upon all the property conveyed, or intended to be conveyed, by said indenture of mortgage."

And the trustee prayed that the defendant railway company be required to pay the whole amount, principal as well as the interest. The amended and substituted bill, after setting up the organization of the consolidated company, the Indianapolis, Bloomington and Western Railway Company, by the merger and consolidation of the Danville, Urbana, Bloomington and Pekin Railroad Company and the Indianapolis, Crawfordsville and Danville Railroad Company, and averring the execution and delivery of the first consolidated mortgage, under which the issue of $3,000,000 of bonds was made, proceeds to show (Record, p. 92, and see Record, p. 22, for a copy of the first consolidated mortgage).

"*Twenty-second.*—Your orator would further show unto your Honor, that it is provided in and by the eighth article of said indenture, among other things in substance, as follows: that if default should be made in the payment of any half year's interest on any of said bonds, and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then the principal of all said bonds secured by said indenture should be and become immediately due and payable, anything in such bonds to the contrary notwithstanding, and that the trustee might so declare the same and notify the said grantor thereof, and upon the written request of the holders of a majority of said bonds then outstanding, said trustee should proceed to collect both principal and interest of all such bonds outstanding by fore-

closure and sale of said property or otherwise, as in and by the said indenture provided.

Twenty-seventh.—Your orator further shows unto your Honor, that default was made in the payment of the installment of interest falling due on the 1st day of October, 1874, on said issue of bonds made by the said Indianapolis, Bloomington and Western Railway Company as aforesaid, and that demand was duly made for payment of a large number of said coupons of said issue at the office of said railway company in the City of New York on the 1st day of October, 1874, and on such demand payment was refused and default made, which has continued hitherto and still does continue, and that the several installments of interest falling due on said issue, viz., on the 1st day of October, 1874, and on the 1st day of April, 1875, and on the 1st day of October, 1875, remain unpaid, and that said default was made and continued without the consent of the holders of said bonds and coupons.

Twenty-eighth.—Your orator would further show unto your Honor, that demand in writing was made on said trustee, on the 13th day of March, 1876, by the holders of more than one-half of said three thousand bonds, to proceed to foreclose the said mortgage given to secure the same, and to collect the entire principal and interest due upon said bonds by due course of law; and by reason of such default and demand said trustee is advised by counsel learned in the law that the principal of said entire three thousand bonds, together with all the arrearages of interest due thereon, is now due and payable, and that it is the right and duty of said trustee to proceed to foreclose said indenture of mortgage given to secure the same, and sell said mortgaged property for the payment and satisfaction thereof."

The defendant railway company never put in issue any of these averments, either as to the making and delivery of the mortgages; the default in the payment of interest; the due presentment of the coupons; the refusal of payment; the request of the requisite number of the bondholders, or the maturity of the whole principal as well as the interest. On the contrary, the default of the railway company having been entered, all these allegations, as well as all the other allegations of the amended and substituted bill, were taken as confessed (Record, 189–190).

Nevertheless, depositions were taken to show all the material facts not sufficiently proved by the exhibits filed in the suit and admitted in the pleadings.

The decree (Record, 189, 193), after reciting the facts found, proceeds as follows:

"8th. It is therefore considered, adjudged and decreed by the court, that the defendant, the said Indianapolis, Bloomington and Western Railway Company, pay to the said complainants in the cross-bill, the said Farmers' Loan and Trust Company, the said amounts above proved to be due on the debts recovered by the said two indentures made to the said Farmers' Loan and Trust Company, to wit: the sum of $6,234,625.00, together with interest thereon at the rate of six per cent. per annum from and after the date of this decree, together with the costs of this suit, taxed at $————, within twenty days from this date, and that in default of such payment by the said Indianapolis, Bloomington and Western Railway Company in the time aforesaid, and in default of such payment by all of the said defendants in such time, it is further ordered, adjudged and decreed that the equity of redemption of all of the said defendants to the said cross-bill of the said Farmers' Loan and Trust Company in the said mortgaged property be forever barred and foreclosed, and that the said railroad of the said Indianapolis, Bloomington and Western Railway Company hereinbefore mentioned as conveyed by the two mortgages to the complainant, the Farmers' Loan and Trust Company, including the right of way therefor, etc., etc., be sold as hereinafter ordered and directed. and as an entirety, the same being, in the opinion and judgment of this court, incapable of being sold separately or in divisions without material injury to the value thereof."

1. From this statement it will be seen that the complainants did aver and prove, and that the court found, that the principal as well as the interest of the two classes of bonds secured by mortgages to the Farmers' Loan and Trust Company became due and collectible, according to the terms of the trust deeds securing the bonds. Appellants do not state the provisions of the first mortgage, but do recite the provision of the first consolidated mortgage. They are mistaken in supposing that they contain like provisions. Appellants now contend that the averment contained in the *twenty-eighth* paragraph of the amended and substituted cross-bill

(Record, 94) is not a declaration in conformity to the form of the consolidated mortgage. As to the first or Danville mortgage, the maturity of the principal cannot admit of a question for a single moment from the facts above recited. As to the first consolidated mortgage we contend, that the principal as well as the interest became immediately due and payable *eo instanti* upon the happening of the default and its continuace for six months, and that the written request of the holders of a majority of the bonds left no option or discretion in the trustee, and made it its duty to proceed to the collection of the principal as well as the interest. The filing of this amended and substituted cross-bill, claiming the whole debt to be due, and asking the court to decree its payment, was an all-sufficient declaration on the part of the trustees, and constituted a sufficient notice, not only to the railway company, but to the whole world, of the declaration. The decree was not entered for more than a year after the filing of the amended and substituted bill, so that abundant notice was given to the defendant before its equity of redemption was barred.

Harper v. *Ely*, 56 Ill., 179.
Ottawa Northern P. R. Co. v. *Murray*, 15 Ill., 339.

We have not the slightest doubt that it was the intention of the draughtsman and of the company to provide that upon default in payment of any installment of interest upon any of the bonds, which should continue for six months, the principal should become immediately due and payable; that the trustee might, at its option, declare the same, and proceed to enforce the security. That is the distinct and positive provision of the first mortgage (*which see*), and is the clearly expressed intention of all, or nearly all, the railroad mortgages that have come under our observation. The clause, and "*shall*, on the written request of the holders of a majority of the said bonds then outstanding, proceed to collect both principal and interest * * by foreclosure and sale," imposes by its terms, and by its fair import, an absolute duty upon the trustees to proceed, which it may not omit or neglect.

The opinion of the court (in *C. D. and V. R'y Co.* vs. *Fosdick, et al.*) holds the written request of a majority of the bonds to be an essential prerequisite. In the present case this request is distinctly averred and proved.

2. It is an entire mistake that the Farmers' Loan and Trust Company sought the foreclosure of the second consolidated mortgage to Dennison and Smith, dated October 1, 1870. It simply recited the facts in respect to it, for the information of the court in joining its trustees as parties defendants. It neither sought nor obtained relief under that mortgage. The decree *nisi* only requires payment of the sums due under the two mortgages to the Farmers' Loan and Trust Company. The only provision in the decree in favor of the second mortgage is an appropriation of a sufficient amount of the surplus, if any, after paying off the two first mortgages. This distribution was proper, we submit, whether the principal had become due or not, and is the only measure of relief left to be granted on the cross-bills of Smith and Thomas, who then represented the bondholders, after the sale of all the property on which their security was based, upon the foreclosure of the prior mortgages.

3. The case presented here is different, in many respects, from the case of *The Chicago, Danville and Vincennes Railway Co. et al.* v. *Fosdick et al.*, heard at the last Term, and especially in respect to the points upon which it is cited and relied on. This is similar in but one respect, and that is, the provisions for foreclosuse in case of default of the first consolidated mortgage, are substantially similar to those in the Danville case, but in every point upon which that case turned there is a most material and substantial difference, both in the pleadings and proofs.

1. In that case there was an appearance and defense by the defendant railway company. Here there was none, and all the averments of the amended and substituted bill were taken *pro confesso*.

2. In that case there was an appeal to this court from the

decree of sale, as well as an appeal from the order of confirmation. Here there is none.

3. In that case there was proof that a large majority of the bondholders had waived or condoned the default. Here there is none.

4. Here there is clear and undisputed proof of the due presentment of numerous coupons, and of default in payment, and its continuance for six months, as well as the confession of the defendant to the allegations of the cross-bill. In that case there was none.

5. Here there is a clear and distinct allegation of the written request of a majority of the bondholders, to the trustee, to foreclose for the principal as well as the interest, followed by distinct and indisputable proof of the fact. In that case there was none.

In its statement of the evidence of the presentment of coupons, the brief of the appellants is singularly at fault. The testimony of Josiah B. Blossom is (Record, 179):

"I *know* that default has been made in the payment of interest coupons on the said three series of bonds as follows: On Danville, Urbana, Bloomington and Pekin bonds, *on October* 1, 1874. On Indianapolis, Bloomington and Western Railway first mortgage bonds, *October* 1, 1874. I know it by ownership of many of the defaulted coupons, *which I caused to be presented*, and which were not paid, and by having seen notarial protest certifying that the coupons from the said three series of bonds had been presented for payment and payment refused."

This is positive, distinct and certain proof of the presentment, demand and refusal of payment on *October* 1, 1874.

Counsel seem also to have overlooked the testimony of the witness, C. A. NEWRING (Record, 188):

"On the 1st of October, 1874, I presented for payment at the office of the Indianapolis, Bloomington and Western Railway Company, No. 57 Broadway, *fifteen coupons* of the Danville, Urbana, Bloomington and Pekin Railway Com-

pany, of $35 each, and *fifteen coupons* of the Indianapolis, Bloomington and Western Railway Company, of $35 gold each, all maturing *October* 1, 1874, and that payment of same was refused, the answer being that there were now no funds to pay, and that a circular would be issued shortly explaining the reason of the non-payment."

Comment is unnecessary. We submit also that this proof was not required, except to inform the conscience of the court, inasmuch as the fact of the default as alleged was not disputed or denied.

Great stress is laid by counsel upon the proposition that the right of the trustees to foreclose at all, and especially to recover for the principal as well the interest, must depend upon the conditions existing at the time of the commencement of the original suit by Turner Brothers; that there not having been at that time a *continued default for six months*, the principal debt had not become due, and that the subsequent continuance of the default, happening during the pendency of the suit, and while the property of the defendant railway company was in the hands of the court, could not be made the basis of a decree for the payment of the principal.

Again, the proposition is asserted that the right of the trustee to foreclose at all, especially for the principal as well as the interest, must, at least, depend upon the conditions existing at the time of filing the cross-bill by the trustee, and that it was not competent for the trustee, by presenting and filing its *amended* and *substituted* cross-bill, though by leave of the court, to set up the facts which transpired subsequently to the commencement of the suit, and to base its recovery upon the conditions then existing.

On the contrary, we affirm that, under the circumstances of this case, neither the commencement of the original suit by the Turner Brothers, nor the appointment of the Receiver on the filing of their bill, nor the appearance and filing of its first cross-bill by the Farmers' Loan and Trust Company, can justly be taken to have so permanently and definitely fixed the status and rights of the parties as to pre-

vent the court from adjusting and determining the rights and interests of all the parties as they existed at the time of the entry of its final decree, or from administering and disposing of the *res* in accordance therewith.

First.—It is not to be forgotten that this receivership was not obtained by any of the trustees in any of these mortgages, who are the only proper representatives of the bondholders, nor that the receivership was obtained by the *voluntary appearance* and consent of the railway company, without service of process, and without notice of any kind to any of the trustees. Indeed, it would not be difficult to prove that the institution of the suit and the appointment of the Receiver was by the direct *procurement* of the railway company, and that the Receiver was the nominee of the railway company. The custody of the *res* having been seized by the court, it was the duty of the trustee to appear and interpose, not merely for the purpose of prosecuting its remedies by way of enforcing the security for the benefit of its *cestuis que trust.*, but for the purpose of protecting their interests, and not to wait the maturity of these obligations, nor until they had received the written request of a majority of the bondholders, before giving their attention to the care and preservation of the *res*. (*Miltenberger* vs. *Railway Co.*, October Term, 1882.) "In view of the public and private interests involved," where a court of equity has seized the property and assets of a railroad company, with both the power and duty to keep it in repair, and to manage and use it, and to authorize its Receiver to raise money necessary for the management and preservation of the property, making the same chargeable as a lien upon the property in preference to all existing mortgage liens. (See *Wallace* v. *Loomis*, 97 U. S., 146.) In view of this condition of things, it would be impossible that either trustees or bondholders should be obliged to lie by until a right has ripened to some fixed and positive method or form of enforcing their security before they can be permitted to come into court, or that having come in for the protection of their interests they should be absolutely bound by the then present status of their rights and claims, so as to forbid them to avail themselves of subsequently ripening rem-

edies and means of enforcing their security. Therefore, there can be no valid objection to the action of the court, in the exercise of its sound discretion, in permitting the trustee, by its amended and substituted bill, to set up the maturity of the principal debt, which happened *pendente lite* through the continuance of the default for more than six months, and the formal request of the bondholders in writing requiring the trustee to proceed to collect the principal. The trustee could not proceed by original bill in another court. The possession of the *res* by this court forbade that step, for many reasons not necessary to be stated. To deny it the right of availing itself of the conditions at the time of filing the amended and substituted bill, would have not come short of an actual denial of justice. The continuance of the default and the maturity of the principal entitled the trustee to proceed to enforce its security somewhere. Practically it could not be effected elsewhere. Hence it was properly done in this suit. Even if there had been no obstacle to its filing and prosecuting an original bill in some other forum, it seems to us to have been altogether commendable in the trustee to seek its remedy in this suit, thereby saving a multiplicity of suits, as well as a possible conflict of jurisdiction.

Second.—While ordinarily a complainant in equity has a right to choose his own defendants and stand or fall by the case he makes—while ordinarily a complainant in equity may choose his own time and method of bringing his case on for hearing—we insist that when he has seized the property of a railroad which the court is bound to maintain and operate, borrowing money and further encumbering the *res* for that purpose, the technical rules which are invoked here as to parties and bills and cross-bills must give way to the exigencies of the situation. It is the inevitable consequence, it seems to us, from the rights and duties of the court regarding public and private interests, in administering the *res* for the benefit of all concerned, that the court may call before it the necessary parties, and grant the relief the nature of the case calls for, without strict regard to the technical rules of pleading which prevail in ordinary cases. The

custody of the *res*, we say, not only gave the court ample authority, but made it an imperative duty to hear the parties, either on cross-bills or intervening petitions, or otherwise, and to administer justice and equity in the premises, in accordance with the facts existing at the date of the decree. If this proposition be sound, it was not only not an error to permit the filing of the amended and substituted bill, and to render its judgment thereon, but it was sound and commendable practice.

We can only repeat that no one of the questions so elaborately discussed in argument could be properly presented to or considered by the court below on exceptions to the report of sale. They had all passed beyond the control of the court, and it was powerless to alter or reform its decrees. Nor can these questions be brought to the attention of this court by an appeal from an order in which none of the questions were in any way involved. An appeal should have been taken from the decrees directly which finally disposed of these questions. Not having been brought here by appeal, we submit that this court can no more consider them on the present appeal than it can consider any other case not brought before it in conformity to the provisions of the oct of Congress, Nor does the question of jurisdiction stand differently from the others. This court can no more pass upon the question of the jurisdiction of the Circuit Court in a case not properly before it, than it can consider any other question. It is as much bound to respect the final judgments and decrees of that court, when not appealed from, as those of any of the tribunals known to the law.

Respectfully submitted,

J. D. CAMPBELL,
Of Counsel.